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Calendar No. 471

84TH CONGRESS, 1st Session } SENATE { REPORT No. 467

IRENE C. (KARL) BEHRMAN

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 92]

The Committee on the Judiciary, to which was referred the bill (S. 92) for the relief of Irene C. (Karl) Behrman, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation, is to provide for the payment of the sum of $3,194.39 to Irene C. (Karl) Behrman, in full satisfaction of her claim against the United States for compensation for loss of certain personal property resulting from her forced evacuation, on or about June 26, 1950, from Seoul, Korea, where she was serving as a service club director with the Special Services Section, United States Army.

STATEMENT

A similar bill was passed by the Senate on August 11, 1954.

In 1947 the claimant accepted a position as a civilian employee of the United States Army in Korea. Initially she served as club director of a headquarters service club and during that time she was paid from nonappropriated funds. In 1949, her services with the Army were terminated so that she could accept a position as service club director with the United States Military Advisory Group to the Republic of Korea (KMAG). Until October 1, 1949, she was paid from appropriated funds, but on that day it became necessary to terminate her position. On the following day she was reemployed in the same position, although her salary was, in this instance, paid out of nonappropriated funds.

In June 1950, when the North Koreans invaded South Korea, it became necessary to evacuate American civilian personnel from Korea. When the then Miss Karl was evacuated she was able to take with her only two handbags, the remainder of her property being of necessity left at Seoul.

On November 13, 1950, Miss Karl filed a claim with the Department of the Army in the amount of $3,633.36 as damages for the loss of her personal property which she was forced to abandon in Korea. This claim for administrative relief was denied for the reason that there was no statute available to the Department of the Army under which her claim could be paid. Her claim was not cognizable under the provisions of the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised, for the reason that (1) the loss of her property was not caused by any negligent or wrongful act or omission on the part of any officer, agent, or employee of the United States, and (2) the loss occurred in a foreign country. Nor could Miss Karl be reimbursed under the provisions of the Military Personnel Claims Act (59 Stat. 225) for the reason that at the time she was forced to abandon her property she was not paid from appropriated funds and could not, therefore, be considered a civilian employee of the Army within the meaning of that act. The instant bill represents the only means by which Miss Karl may receive compensation for the loss of her personal property.

The committee requested and received reports from the Department of the Army and the Department of Justice on a bill submitted in the 82d Congress (S. 3348) for the relief of this same claimant. Both of these Departments discuss the inability of this claimant to receive administrative relief, and both of them concur in the recommendation that the claimant be compensated in a reasonable amount for the loss she sustained.

The committee concurs in the views of the Departments which submitted reports on this legislation. This claimant undoubtedly would have received administrative relief except for the change in the source of her salary 9 months previous to her forced evacuation from Korea. The claimant's own words probably best state the unfortunate situation in which she finds herself. In a letter addressed to the Honorable Robert A. Lovett, then Secretary of Defense, and dated September 29, 1951, Miss Karl stated:

> In July I accepted employment with the Special Services, United States Army in Korea. At that time I knew nothing of it, and if I did I would not have understood it, but according to the letter, I was paid from nonappropriated funds. In July 1949, I began to be paid from appropriated funds. In October 1949, I was again paid on nonappropriated funds. The two girls that were my recreational directors were paid on appropriated funds. This I understand, was the only way they could keep three girls in Korea at the time. No fault of those in authority in Korea (KMAG) * * *. It seems that my ill fortune is based on the fact that the North Koreans invaded Seoul at a time when I was paid with other than appropriated funds. Had I been so paid, apparently my full claim would have been allowed, and paid, and I would not be in my present financial circumstances.

The committee does not feel that this claimant should be denied compensation for the loss of her personal property while others who lost their property under similar circumstances were reimbursed for their losses. To deny compensation in an instance such as this on a technicality would indeed be inequitable. Consequently, the com-

mittee recommends favorable consideration of this legislation as amended.

Attached to this report and made a part thereof are the reports of the Department of Justice and the Department of the Army referred to earlier.

DEPARTMENT OF JUSTICE,
Washington, December 12, 1952.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3348) for the relief of Irene C. Karl.

The bill would provide for payment of the sum of $3,033.36 to Irene C. Karl in full satisfaction of her claim against the United States for compensation for loss of certain personal property resulting from her forced evacuation on or about June 26, 1950, from Seoul, Korea, where she was serving as a service club director with the Special Services Section, United States Army Forces.

In compliance with your request, a report was obtained from the Department of the Army concerning this legislation. According to that report, which is enclosed, it appears that in 1943 Miss Karl was employed by the American Red Cross as a recreation worker and served as director of a club for servicemen overseas until 1946, when she returned to the United States and resigned her position. In 1947 she was again employed by the American Red Cross and was sent to Korea where she served as program director of a club for American military and official civilian personnel. At the request of Army authorities in Korea, she was released from her contract with the American Red Cross so that she might accept a position as a civilian employee of the United States Army in Korea. She served as club director of a headquarters service club during which employment she was paid from nonappropriated funds. In 1949, her services with the Army were terminated so that she might accept a position as service club director with the United States Military Advisory Group to the Republic of Korea. Her salary in this position was paid from appropriated funds until October 1, 1949, when it became necessary to terminate her position. On the following day, however, she was reemployed in the same position with her salary being paid from the Korean Military Advisory Group central post fund, a nonappropriated fund.

In June 1950 when the North Korean troops invaded Southern Korea, it became necessary to evacuate American civilian personnel from Korea. When Miss Karl was evacuated she was able to take with her only two handbags, the remainder of her property being of necessity left at Seoul. On November 13, 1950, Miss Karl filed a claim with the Department of the Army in the amount of $3,633.36 for damages on account of the loss of her personal property which she was forced by circumstances to abandon in Korea. She was advised by the Office of the Judge Advocate General that there was no statute available under which her claim could be paid inasmuch as, at the time she was compelled to abandon her personal property she was paid from nonappropriated funds and thus could not be considered a civilian employee of the Army within the meaning of the Military Personnel Claims Act (31 U. S. C. 222d).

The Department of the Army states that despite the fact that Miss Karl could not be regarded as an employee of the Army because she was paid from nonappropriated funds and therefore was not entitled to the benefits of the Military Personnel Claims Act, nevertheless, she was in Korea solely because of her employment by the Korean Military Advisory Group and was rendering exemplary service to the United States in the performance of an essential Army activity. It further states that under these circumstances, it believes that it would be unjust and inequitable to require her to bear the burden of the loss of her personal property while Army employees paid from appropriated funds who sustained similar losses have been compensated therefor.

The Department of the Army states that for this reason it feels that she should be compensated in a reasonable amount for the loss she sustained. It points out, however, that the valuations placed by Miss Karl on some of the items of personal property lost are somewhat excessive and that a fair value of the total items lost amounts to $3,194.39. Accordingly it states that it would have no objection to the enactment of the bill if it should be amended so as to provide for an award in the amount of $3,194.39.

The Department of Justice concurs in the views of the Department of the Army:

The Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

ROSS L. MALONE, Jr.,
Deputy Attorney General.

DEPARTMENT OF THE ARMY,
Washington, D. C., November 13, 1952.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 3348, 82d Congress, a bill for the relief of Irene C. Karl. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources they will be secured by your Department and submitted along with your report to the committee. You, therefore, request the comments of the Department of the Army on S. 3348.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Irene C. Karl, the sum of $3,633.36 in full satisfaction of her claim against the United States for compensation for loss of certain personal property resulting from her forced evacuation, on or about June 26, 1950, from Seoul, Korea, where she was serving as a service club director with the Special Services Section, United States Army Forces."

The records of the Department of the Army show that Irene C. Karl was born in Waukegan, Ill., on April 13, 1905; that she graduated from Gustavus Adolphus College, St. Peter, Minn., in 1932, with the degree of bachelor of arts; that thereafter for several summers she attended school at the University of Wisconsin, from which she received the degree of master of arts in 1940; and that during the period from 1932 to 1943 she held various positions in private employment and in the public service.

On October 11, 1943, Miss Karl was employed by the American Red Cross as a recreation worker, and in December 1943 she was sent to England. She served as acting club director of a Red Cross club for servicemen at Wattisham, England, until November 15, 1944. On that date she was appointed director of the Red Cross Fleet Club at Exeter, Devon, England, which position she held until on or about January 20, 1946, when such club was deactivated. Her services as director of said club were so outstanding that she received an official commendation from the commanding officer of the United States naval installation served by the club. On February 20, 1946, she returned to the United States from England and resigned her position with the American Red Cross.

On February 3, 1947, Miss Karl was again employed by the American Red Cross and was sent to Korea to serve as program director of the Seoul club, a large off-post club operated by the American Red Cross for American military and official civilian personnel. She managed said club until July 28, 1947, when, at the request of the United States Army authorities in Korea, she was released from her contract with the American Red Cross so that she might accept a position as a civilian employee of the United States Army in Korea. Immediately after her employment by the Army she was assigned to the Special Services Section, Headquarters XXIV Corps, United States Army, and was made club director of the service club of said headquarters at Seoul, Korea. While serving in that position she was paid from nonappropriated funds. On June 30, 1949, Miss Karl's services with the XXIV Corps, United States Army, were terminated so that she might accept a position as service club director with the United States Military Advisory Group to the Republic of Korea (commonly referred to as the Korean Military Advisory Group). Her service as service club director with the Korean Military Advisory Group began on July 1, 1949, and her salary was paid out of funds appropriated by the Congress until October 1, 1949, when it became necessary to terminate her position as an employee of the United States Army paid from appropriated funds. However, on the following day she was reemployed in the same position as service club director, with her salary being paid from the Korean Military Advisory Group central post fund (a nonappropriated fund).

Miss Karl's services as service club director with the Korean Military Advisory Group were performed most satisfactorily, and on June 15, 1950, she received from Brig. Gen. W. L. Roberts, the chief of said group, the following official commendation:

"1. Prior to my departure from KMAG (Korean Military Advisory Group) it is fitting that I express to you my appreciation for your superior performance of duty while serving with this group.

"2. From May 19, 1949, to the present date you have served as the director to the KMAG service club in a most noteworthy manner. The lack of recreational facilities in Korea has always been one of the greatest obstacles to high morale. However, since KMAG has been in existence you have done a splendid piece of work in remedying this deficiency. Under your supervision the KMAG service club has become the social and recreational center not only for KMAG but for the entire American colony in the Seoul area. Your imagination, energy, forceful guidance and untiring efforts to render better and more complete service have made an exceptional contribution to the morale of this group. Expecially outstanding have been your successful efforts in having a fine swimming pool built on the club grounds—the first such pool that has been available to American personnel in 5 years.

"3. I wish to express my most sincere appreciation to you for the fine job you and your organization have done in assisting to maintain the morale of this group at its present high level.

"4. A copy of this letter has been placed in your official 201 personnel file for permanent record."

Miss Karl was serving as service club director with the Korean Military Advisory Group (and paid from nonappropriated funds) in June 1950 when the North Korean troops invaded South Korea. This invasion made it necessary to evacuate American civilian personnel from Korea. In this emergency Miss Karl rendered very valuable service to the American military authorities in Korea in assisting in the evacuation from Seoul of the dependents of United States military and State Department personnel. It finally became necessary for Miss Karl to leave Korea herself. She was able to take with her to the port of embarkation at Inchon, Korea, only two handbags, the remainder of her property being of necessity left at Seoul. When she reached Inchon she was so exhausted that she fell and fractured her skull. As the result of her injury it became necessary that she be hospitalized and treated in Japan for several weeks before she was able to return to the United States.

On September 19, 1950, Miss Karl was employed by the Department of the Army as a hostess at a service club at Fort Leonard Wood, Mo. It became necessary for her to resign this position effective December 31, 1950, because she was not physically well enough to continue in the job.

On November 13, 1950, Miss Karl filed a claim with the Department of the Army in the amount of $3,633.36 for damages on account of the loss of her personal property which she was forced by circumstances beyond her control to abandon in Korea and which thus became lost. On May 16, 1951, Miss Karl was notified by the Office of the Judge Advocate General of the Army that there was no statute available to the Department of the Army under which her claim could be paid. Although Miss Karl was a civilian employee of the Army, at the time she was compelled to abandon her personal property, she was paid from nonappropriated funds, and because of that fact she could not be considered a civilian employee of the Army within the meaning and purview of the Military Personnel Claims Act (59 Stat. 225; 31 U. S. C. 222c), so as to be entitled to the benefits of that statute. That act, as amended, authorizes the Secretary of the Army, and such other officer or officers as he may designate for such purposes and under such regulations as he may prescribe, "to consider, ascertain, adjust determine, settle, and pay any claim not in excess of $2,500 against the United States, — * * of military personnel and civilian employees of the Department of the Army or the Army, * * * for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service * * *."

The claim of Miss Karl for damages on account of the loss of her personal property is not cognizable under the provisions of the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reasons that (1) the loss of said property was not caused by any negligent or wrongful act or omission on the part of any officer, agent or employee of the United States, and (2) the loss occurred in a foreign country.

While Miss Karl could not be regarded as an employee of the Department of the Army because of the fact that she was paid from nonappropriated funds and,

therefore, was not entitled to the benefits of the Military Personnel Claims Act, supra, she was in Korea solely because of her employment by the Korean Military Advisory Group and was rendering exemplary service to the United States in the performance of an essential Army activity. Under these circumstances it is believed that it would be unjust and inequitable to require her to bear the burden of the loss of her personal property, which loss occurred through no fault or negligence on her part, while other employees of the Department of the Army, paid from appropriated funds, who lost their personal property under similar circumstances, have been compensated therefor under the Military Personnel Claims Act. For this reason the Department of the Army feels that Miss Karl should be compensated in a reasonable amount for the loss she sustained.

It appears that the valuations placed by Miss Karl on some of the items of personal property lost by her are somewhat excessive. A reevaluation of the items in question, after deducting therefrom two items covering the loss of certain property which cannot be considered as having been reasonable, useful, necessary or proper for the claimant to have had in her possession under the attendant circumstances, indicates that a fair value of all of the property lost for which compensation should be paid by the United States amounts to the sum of $3,194 39. Accordingly, the Department of the Army would have no objection to the enactment of S. 3348 if it should be amended so as to provide for an award to Miss Karl in the amount of $3,194 39.

A similar bill, H. R. 3128, 82d Congress, for the relief of Elaine Dovico has been enacted by the Congress, and it was approved by the President on October 10, 1951 (Private Law 317, 82d Cong.).

Sincerely yours,

FRANK PACE, Jr., *Secretary of the Army.*

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Calendar No. 472

84TH CONGRESS, 1st Session | SENATE | REPORT No. 468

ELKAY MANUFACTURING CO.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 135]

The Committee on the Judiciary, to which was referred the bill (S. 135) for the relief of the Elkay Manufacturing Co., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of $5,190.15 to the Elkay Manufacturing Co., Chicago, Ill., in full satisfaction of all claims of that company against the United States for additional compensation under a contract between such company and the National Instutes of Health for certain stainless steel dog and monkey cages.

STATEMENT

The claimant, Elkay Manufacturing Co., is an Illinois corporation with its plant located in Cicero, Ill. The company specializes in manufacturing and fabrication of high-quality stainless steel equipment. This firm was requested to submit a bid for the fabrication of certain monkey and dog cages to be used by the National Institutes of Health. When the bids were opened, the claimant had submitted the lowest bid and the contract was awarded to it.

After entering into performance under the contract, one of the engineers of the Elkay Manufacturing Co. questioned whether the company was correct in assuming that only bottom cages were to be furnished under the contract. The claimant company thereupon requested a decision from the contracting officer on that point, because its bid had been based upon the assumption that the allusion

in the invitation to bid to "cage, monkey" and "cage, dog," indicated a single cage rather than a unit consisting of two cages (top and bottom). By letter dated April 11, 1953, the contracting officer advised the company that under the contract it was required to deliver 175 units of monkey and dog cages—each unit consisting of 2 cages (top and bottom), or a total of 350. Thereafter, the company requested to be relieved of liability under the contract but this request was refused by the Secretary of Health, Education, and Welfare. The claimant company thereupon furnished the 350 cages required although such performance necessitated the expenditure by the claimant of an additional sum of $17,598 in addition to the contract price of $47,822.05.

In the preceding Congress, the committee requested reports on this legislation from the Department of Health, Education, and Welfare and the Comptroller General of the United States. The Department of Health, Education, and Welfare recommended that the bill not be enacted for the reason that that Department does not conclude, from a review of the facts, any reason either in law or in equity for additional payment on the contract.

Information in the committee file indicates that out of 8 bids submitted on this contract, at least 2 were submitted in the belief that only single cages were required. This factor, added to the acknowledgment of the Comptroller General that the invitation to bid and the specifications were not as clearly stated as they should have been, leads the committee to the conclusion that the relief afforded claimant company by this legislation is warranted. It should be noted that approval of this bill will not reimburse the claimant company in full for the losses sustained by it. The compensation awarded by this bill only represents the difference between claimants bid and the lowest responsible bid submitted on the basis of the 2 cage units ($53,012.20).

Attached to this report is the report of the Comptroller General referred to earlier and the report of the Department of Health, Education, and Welfare to which is attached a copy of the decision of the Office of the Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 4, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of May 5, 1954, acknowledged by telephone May 12, requesting a report on S. 3375, 83d Congress, entitled "A Bill for the relief of the Elkay Manufacturing Co., of Chicago, Ill."

The bill provides, in pertinent part, as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Elkay Manufacturing Company, of Chicago, Illinois, the sum of $17,598. The payment of such sum shall be in full satisfaction of all claims of the said Elkay Manufacturing Company against the United States for additional compensation under the contract numbered SAPH 55725 (NIH), between such company and the National Institutes of Health, for the construction of certain stainless steel dog and monkey cages. Such sum plus the amount of compensation heretofore received by the Elkay Manufacturing Company represents the actual costs incurred by it in manufacturing such cages, it having submitted its bid under the erroneous impression that each unit to be manufactured was to consist of only one cage, whereas in fact each unit was to consist of two cages."

By invitation for bids No. X2090, the Public Health Service, National Institutes of Health, Bethesda, Md., requested bids for furnishing various items of animal-care equipment. In response to the invitation, Elkay Manufacturing Co. submitted a bid dated January 19, 1953, in part as follows:

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
7	Cage, monkey, type MC-2 Drawing: MC-2 sheet 1 of 2 MC-2, sheet 2 of 2. Specifications: Sec. 1.00 to 2.60, 41.00, to 41.60. (NIH 35-8317-0502) Alternate type No. 430	80	Each do	$283.67 283.67	$22,693.60 22,693.60
8	Cage, dog, type DC-2 Drawing: DC-2, sheet 1 of 2 DC-2, sheet 2 of 2. Specifications: Sec. 1.00 to 2.60, 42.00 to 42.60. (NIH 35-8317-0202) Alternate type No. 430	95	do do	264.51 264.51	25,128.45 25,128.45

The bid of the company being the lowest received on items 7 and 8 was accepted as to those 2 items on February 12, 1953, consumating contract No. SAph-55725(nih).

By letter dated April 4, 1953, the Elkay Manufacturing Co. advised the contracting officer that one of its engineers questioned whether it was correct in assuming that only bottom cages were required to be furnished and that it considered that only 175 cages in all were required under items 7 and 8. By letter dated April 11, 1953, the contracting officer advised the company that under the contract it was required to deliver 175 units of monkey and dog cages—each unit consisting of 2 cages (top and bottom) or a total of 350 cages.

The company requested that it be required to furnish only a total of 175 cages or that it be relieved from all liability under the contract. In decision of July 13, 1953, B-114581, the Secretary of Health, Education, and Welfare was advised that the specifications were sufficiently clear that a unit consisting of a top cage and a bottom cage was required under each of items 7 and 8; that the other bidders were contacted and 5 of the 6 bidders who responded stated that their bid prices on the 2 items were based on furnishing a unit consisting of a top and bottom cage; that the prices quoted by Elkay Manufacturing Co. were not out of line with those quoted by the other bidders and that, therefore, there was no legal basis for relieving Elkay Manufacturing Co. from furnishing units consisting of a top and bottom cage as required by its accepted bid.

The Elkay Manufacturing Co. furnished the 350 cages and apparently has received payment therefor as provided in the contract, or a total of $47,822.05. The present bill proposes to allow the contractor an additional sum of $17,598 stated to represent the balance of the contractor's actual cost incurred in manufacturing the cages.

It is the view of the General Accounting Office that the acceptance of the bid of Elkay Manufacturing Co. created a valid and binding contract requiring the furnishing of 175 cage units, each unit consisting of a top and bottom cage, or a total of 350 cages. However, it is true that the invitation and specifications were not as clear as they should have been and one other bidder apparently was under the impression that only 175 cages were required. Hence, there are certain equitable considerations that strongly favor the contractor.

The contractor apparently has been paid $47,822.05 and if it were given an additional $17,598 as provided in this bill, the contractor would receive a total of $65,420.05 for the cages furnished. The record shows that the Government could have procured all the cages from other bidders who have stated that their bid prices were computed on a unit of two cages, for a total of $53,012.20. Hence, this Office could not recommend the payment of $17,598 as specified in this bill. However, in view of the circumstances indicated above, it appears that the sum of $5,190.15, the difference between the contract price and the amount for which the Government could have secured the cages, would constitute an equitable adjustment in the matter. This Office would have no objection to the enactment of this bill if the text thereof should be amended to provide for payment of an amount to the Elkay Manufacturing Co. not in excess of $5,190.15.

Sincerely,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, July 2, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in response to your request of May 5, 1954, for a report on S. 3375, a bill for the relief of the Elkay Manufacturing Co., of Chicago, Ill.

The bill would authorize and direct the Secretary of the Treasury to make an additional payment of $17,598 to the Elkay Manufacturing Co. under contract numbered SAPH 55725 (NIH). This sum is claimed as the actual costs involved in construction of stainless steel dog and monkey cages, in excess of the total contract amount of $47,822.05, for these cages. The claim is based upon the allegation of this firm that it erroneously understood each unit to be manufactured was to consist of only 1 cage, whereas in fact, each unit as shown in the specifications was to consist of 2 cages.

The bill would result in a total payment of $65,420.05 to the Elkay Manufacturing Co. However, if the same items had been awarded to the next low bidder, total payments would have only amounted to $53,012.20. As a result the Government would pay under this bill, $12,407.85 over and above the amount the cages could have been obtained for as a result of the competitive bids received from other manufacturers. In fact, there were five other bidders whose prices were lower than the total amount now requested by the Elkay Manufacturing Co., as you will note from the tabulation of bids in the attached Comptroller General's Decision which was rendered in this case. Inquiry of several unsuccessful bidders has established that each of them clearly understood they were bidding on a two-cage unit and, under the circumstances, we believe that to grant relief to this contractor would constitute an unwarranted expense to the Government and an unfairness to these other bidders.

It is to be noted further that the Comptroller General of the United States ruled in decision No. B–114581, dated July 13, 1953, that there was "no legal basis for relieving the Elkay Manufacturing Co. from liability for furnishing under items 7 and 8 of the contract a unit consisting of a top cage and bottom cage required by the specifications at its bid prices, or for increasing the consideration therefore."

In our opinion, a review of the entire facts of this case does not reveal any reason either in law or in equity for additional payment on this contract, nor do we believe that it would be in the best interests of the Government to provide additional payment contrary to the Comptroller General's decision.

We would therefore recommend that the bill not be enacted by the Congress.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

OVETA CULP HOBBY, *Secretary.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 13, 1953.

The honorable the SECRETARY OF HEALTH, EDUCATION, AND WELFARE

MY DEAR MRS. SECRETARY: Reference is made to a letter dated May 19, 1953, with enclosures, from the Executive Officer, National Institutes of Health, submitted in response to letter dated April 27, 1953, requesting a report relative to an error alleged by the Elkay Manufacturing Co. to have been made in its bid dated January 19, 1953, on which contract No. SAph–55725 dated February 12, 1953, is based.

The National Institutes of Health, United States Public Health Service, Bethesda, Md., by invitation No. X2090–1–21–53, as amended, requested bids—to be opened January 21, 1953—for furnishing animal-care equipment described under items 1 to 38, inclusive. In response to the invitation, the Elkay Manufacturing Co. submitted a bid, in part, as follows:

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
7	Cage, monkey, type MC-2. Drawing: MC-2 sheet 1 of 2 MC-2, sheet 2 of 2. Specifications: Sec. 1.00 to 2.60, 41.00, to 41.60. (NIH 35-8317-0502) Alternate type No. 430	80	Each do	$283.67 283.67	$22,693.60 22,693.60
8	Cage, dog, type DC-2. Drawing: DC-2, sheet 1 of 2 DC-2, sheet 2 of 2. Specifications: Sec. 1.00 to 2.60, 42.00 to 42.60. (NIH 35-8317-0202) Alternate type No. 430	95	do do	264.51 264.51	25,128.45 25,128.45

* * * * * * *

The bid of the company was accepted as to items 7 and 8 on February 12, 1953.

By letter dated April 4, 1953, the Elkay Manufacturing Co. advised the contracting office that one of its engineers questioned whether it was correct to assume that under the contract only bottom cages were required to be furnished; and that it considered that only 175 cages were required under items 7 and 8. By letter of April 11, 1953, the contracting office advised the company that under items 7 and 8 of the contract it was required to deliver 175 units of monkey and dog cages—each unit to consist of 2 cages.

In a letter dated April 4, 1953, addressed to this Office, the Elkay Manufacturing Co. requested that it be released from obligations under said contract—the bases therefore being as follows:

"(1) Bid requested prices on only 80 monkey cages and 95 dog cages, or a total of 175 cages.

"(2) The specifications were not clear as they should have stated that 1 complete cage consisted of 1 top and 1 bottom cage.

"(3) Our bid was submitted based on furnishing 175 bottom cages in accordance with drawing submitted with the bid.

"(4) We stand to lose considerable amount of money if we are forced to furnish 350 cages instead of 175 cages * * *."

Sections 41.00, 41.10, and 41.11 of specification No. MC–2 covering monkey cages are as follows:

"*41.00 Materials:* The angle iron frame of the *cage units* shall be of hot-rolled steel which shall be hot dipped galvanized after fabrication in accordance with specifications. The panels of the cage and door shall be fabricated of stainless steel of types and guages as specified below.

"*41.10* * * * The *bottom cage* shall be mounted on 4 swiveling casters and shall have an ear at each upper corner of 1½" x 1½" x 3/16" angle iron to retain the top cage. The *top cage* shall be of *identical construction as the bottom cage except that it shall not have ears*, and shall not be mounted on casters. * * *

"*41.11* * * * The *bottom cage* shall have a retaining ear welded to each corner as per drawing with 4 welds per ear and on the outside. * * * (Italic supplied.)

The provisions of sections 42.00, 42.10, and 42.11 of specification No. DC–2, covering dog cages, are identical to the referred-to sections of specification No. MC–2 quoted above. Also, each of the drawings covering the monkey and dog cages contained the following notations: (1) "Ears for bottom unit only;" and (2) "Casters for bottom unit only." Thus, it appears that the specifications and drawings are sufficiently clear to indicate that a unit consisting of a top cage and bottom cage was required under each of items 7 and 8. In that connection, in order to determine whether the specifications and drawings referred to in the invitation were clear, the other bidders were contacted and 5 of the 6 bidders who responded stated that their bid prices on each of items 7 and 8 were based on furnishing a unit consisting of a top cage and bottom cage.

Moreover, there was nothing on the face of the bid of the company to indicate that the prices quoted for items 7 and 8 covered the bottom cage only. The prices quoted by the Elkay Manufacturing Co. on items 7 and 8, and the prices quoted by the 7 other bidders thereon were as follows:

Bidder	Item 7	Item 8	Bidder	Item 7	Item 8
Contractor	$283.67	$264.51	No. 5	$354.50	$354.50
No. 2	306.00	282.00	No. 6	362.00	300.00
No. 3	312.34	308.03	No. 7	399.10	391.30
No. 4	315.00	295.00	No. 8	805.00	799.00

In a report dated May 19, 1953, from the contracting officer, it was stated:

"In view of the fact that there was only a difference of $22.33 between the low bidder and the next low bidder on item 7 and a difference of $17.49 between the low bidder and the next low bidder on item 8, and since there was a spread in excess of $500 between the low bidder and the high bidder on items 7 and 8, there was no reason to suspect an error in the bid, nor any reason to suspect that the low bidder had, in fact, misread the specifications due to lack of clarity."

The difference between the bid of the Elkay Manufacturing Co. on items 7 and 8 and the other bids received thereon is not so great as to justify a conclusion that the contracting officer should have been on notice of the probability of error in the bid of the company. So far as the present record shows, the acceptance of the bid was in good faith, no error having been alleged until after award. Although, after award, the company furnished its worksheet and other data in support of its allegation of error, it does not appear that, prior to award, the contracting officer had knowledge of the factors used by the company in computing its bid prices. The acceptance of the bid, under the circumstances involved, consummated a valid and binding contract and fixed the rights and liabilities of the parties thereto. See *United States* v. *Purcell Envelope Co.* (249 U. S. 313) and *American Smelting and Refining Company* v. *United States* (259 U. S. 75).

Accordingly, I find no legal basis for relieving the Elkay Manufacturing Co. from liability for furnishing under items 7 and 8 of the contract a unit consisting of a top cage and bottom cage required by the specifications at its bid prices, or for increasing the consideration therefor.

Sincerely yours,

E. L. FISHER,
Acting Comptroller General of the United States.

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Calendar No. 473

84TH CONGRESS, 1st Session } SENATE { REPORT No. 469

JUN 16 1955
LAW LIBRARY

MR. AND MRS. FRANK GOTO

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 187]

The Committee on the Judiciary, to which was referred the bill (S. 187), for the relief of Mr. and Mrs. Frank Goto, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Attorney General, notwithstanding section 2 (a) of the Japanese Evacuation Claims Act of July 2, 1948, as amended (50 U. S. C. App. 1982 (a)), to determine under such act any claim presented by Mr. and Mrs. Frank Goto within 12 months after the date of enactment of this bill.

STATEMENT

An identical bill of the 83d Congress, S. 239, passed the Senate, August 16, 1954.

Claimants herein were among the Japanese people who were evacuated from Los Angeles in 1942. Their property was confiscated and they were sent to the Heart Mountain Camp in Wyoming, where they remained until 1945. The information in the file indicates that Mr. and Mrs. Goto since 1948 have been residents of New Jersey.

Section 2 (a) of the act of July 2, 1948, as amended, provided that the Attorney General should receive claims for a period of 18 months from the date of enactment of the act and that all claims not presented within that time should be forever barred. Pursuant to that statute, approximately 24,000 claims were received in the Department of

Justice on or before January 3, 1950, the end of the statutory filing period. The Department advises this committee that the filing time for these claims received much publicity in the Japanese press during the latter months of the year 1949 and that the Government made every effort to accord maximum publicity to the expiration date, and in December 1949, pursuant to an arrangement with the Post Office Department, notices of the expiration date were sent to all post offices for display.

The Justice Department further advises that no claim was received from Mr. Goto until January 16, 1950, when a letter dated January 15, 1950, was received from claimant, in which he explained that he had not read the newspapers and accordingly was unaware of the expiration of the filing date of January 3, 1950. The Department contends that in view of the fact that there were approximately 24,000 claims received during the filing period and that less than 100 claims were received after the expiration of that period, this would indicate that the Evacuation Claims Act was well publicized and that relatively few claimants failed to present their claims within the statutory period.

Evidence before the committee indicates that these claimants had left California in 1948 and had settled in New Jersey. As a result, these claimants were out of touch with their Japanese friends in California and did not learn that they could make a claim for their confiscated property until January 5, 1950, when they received a copy of a Japanese newspaper from a friend in California.

The Justice Department opposes enactment of the instant bill on the ground that favorable consideration would establish a precedent under which other dilatory claimants could demand similar action.

The committee is constrained to disagree with the adverse report of the Justice Department. Here is a case of two claimants who do not speak or read English well and were not aware of their filing rights until 2 days after the filing date had elapsed. They immediately filed their claim, which was received 13 days late. The committee generally agrees that a cutoff date in a statute should be strictly observed. However, in the instant case, the committee is of the belief that equity demands that these claimants should not be penalized because their claim was filed 13 days late. This bill does not decide the merits of their claim, but only permits their claim to be examined on its merits notwithstanding the late filing. In view of the above, the committee recommends that this claim be favorably considered.

Attached hereto and made a part hereof is the report of the Department of Justice submitted in connection with an identical bill of the 83d Congress.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, November 10, 1953.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 239) for the relief of Mr. and Mrs. Frank Goto.

The bill would authorize and direct the Attorney General, notwithstanding section 2 (a) of the Japanese Evacuation Claims Act of July 2, 1948, as amended (50 U. S. C. App. 1982 (a)), to determine under such act any claim presented by

Mr. and Mrs. Frank Goto within 12 months after the date of enactment of the bill and would further provide that nothing contained in the bill shall be construed as an inference of liability on the part of the United States.

Section 2 (a) of the act of July 2, 1948, as amended, provided that the Attorney General should receive claims for a period of 18 months from the date of enactment of the act, and that all claims not presented within that time should be forever barred. Pursuant to that statute, approximately 24,000 claims were received in the Department of Justice on or before January 3, 1950, the end of the statutory filing period. The existence of the statute, and the fact that the filing time was about to expire received much publicity in the Japanese press during the latter months of the year 1949. Moreover, the Government made every effort to accord maximum publicity to the expiration date and in December 1949, pursuant to an arrangement with the Post Office Department, notices of the expiration date were sent to all post offices for display.

No claim was received from Mr. Goto until January 16, 1950, when a letter, dated January 15, 1950, was received from him in which he explained that he had not read the newspapers and, accordingly, was unaware of the expiration of the filing period. The fact that approximately 24,000 claims were received during the filing period, and that less than 100 claims were received after the expiration of that period, would indicate that the Evacuation Claims Act was well publicized and that relatively few claimants failed to present their claims within the statutory period.

To extend the filing period for this claimant would establish a precedent under which other dilatory claimants could demand similar action. Moreover, if individuals who failed to file at all within the statutory period were permitted to present claims now, no reason appears why other claimants, who were precluded from adding items to their claims after the filing period, should not expect similar waiver of the time limitations for such items. There appear to be no facts in this case which would warrant giving to this claimant preferential treatment which is not accorded other claimants.

The Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

ROBERT W. MINOR,
Acting Deputy Attorney General.

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Calendar No. 474

84TH CONGRESS, 1st Session | SENATE | REPORT No. 470

LAURIE DEA HOLLEY ET AL.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1020]

The Committee on the Judiciary, to which was referred the bill (S. 1020) for the relief of Laurie Dea Holley and the legal guardian of Karmen Lael Holley, minor child, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay to Laurie Dea Holley of Cannonville, Utah, widow of the late Elmer Leroy Holley, the sum of $5,000, and to the legal guardian of their minor child, Karmen Lael Holley, the sum of $20,000, in full satisfaction, except for certain benefits under the Employees' Compensation Act, of their claim against the United States on account of the accidental death of their husband and father on November 29, 1953, while employed in the United States Senate Post Office.

STATEMENT

An identical bill passed the Senate in the 83d Congress.

Elmer Leroy Holley was fatally injured while engaged in the performance of his duties as an employee of the United States Senate Post Office on November 29, 1953. Mr. Holley was attempting to place on an elevator a mail truck containing approximately 400 pounds of mail, and neither he nor the custodial employee who had opened the elevator door from the outside noticed that the elevator was not in position on the first floor. When Holley pushed the truck into the empty shaft, its weight was such as to throw him off balance and

drag him into the empty shaft along with the heavily loaded mail truck, where he fell approximately one floor to the basement and suffered injuries from which he died approximately 3 hours later.

A thorough investigation of the accident was made by the Architect of the Capitol, in cooperation with the Metropolitan Police Department of the District of Columbia, and it was determined that the custodial employee who opened the elevator door was authorized to do so; that the door itself functioned properly, but that there was negligence on the part of the custodial employee in not determining whether the elevator was, in fact, at the floor before he opened the door.

His widow and small child are presently receiving compensation from the Bureau of Employees' Compensation in the sum of $130.02 per month to the widow as long as she remains unmarried, and $48.76 per month to the minor child until she reaches the age of 18. Admittedly, these payments are inadequate to compensate this young woman and her child for the loss of their husband and father.

Mr. Holley was not entitled to the usual death gratuity paid to employees of the Senate because he had only been employed with the Senate less than 2 months.

In view of the facts and circumstances in this case, the committee is of the opinion that Congress has a duty to compensate Mr. Holley's survivors for his tragic and untimely death. The committee, therefore recommends favorable consideration of the bill.

Attached hereto for the information of the Senate is a copy of a letter addressed to Senator William E. Jenner, chairman of the Committee on Rules and Administration, by Senator William Langer, chairman of the Committee on the Judiciary, under date of June 21, 1954, together with Senator Jenner's reply, dated July 7, 1954.

JUNE 21, 1954.

HON. WILLIAM E. JENNER,
Chairman, Senate Committee on Rules and Administration,
Washington, D. C.

DEAR SENATOR JENNER: Enclosed for your information is a copy of the bill (S. 3436) for the relief of the widow of a former Senate employee who, you will recall, was killed in the tragic accident here in the Senate Office Building last November. Also enclosed is copy of a report on the bill which the Judiciary Committee has received from the Post Office Department.

The reason I am calling this to your attention is that I would like to have your views with respect to the extent to which such private legislation comports with, or is contrary to, the formula which I understand the Rules Committee has worked out with respect to gratuitous payments out of the contingent fund to the survivors of those employees of the Senate who died while so employed.

For your further information, I am also enclosing a letter from Senator Bennett, dated June 2, 1954, and another letter dated June 7, 1954, to which is attached a memorandum by an attorney who has been assisting Mrs. Holley in connection with the death of her husband. I would appreciate it if you would return the latter enclosures when they have served your purpose.

With kindest regards, I am

Sincerely,

WILLIAM LANGER, *Chairman.*

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
July 7, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
Senate Office Building, Washington, D. C.

DEAR SENATOR LANGER: This replies to your letter of June 21, 1954, in reference to bill (S. 3436) for the relief of Laurie Dea Holley, introduced by Senator Bennett on May 11, and presently pending before your Committee on the Judiciary. Copies of two letters to you from Senator Bennett, together with the statement prepared by Mr. John Y. Merrell, attorney at law, which were enclosed within your letter, are returned herewith.

Such private legislation as proposed by S. 3436 would be contrary to the death-gratuity formula which this Committee on Rules and Administration unanimously adopted on June 11, 1952, and which was later announced to the Senate. That you may fully understand the scope of that formula, I have enclosed a copy of it.

You will see from it that the Committee on Rules and Administration retains the right to withhold any death benefits or modify them as the circumstances of a person's employment would merit. If the committee chooses to do so, it can consider the extension to the widow of Elmer L. Holley a gratuity of some certain amount in view of Mr. Holley's Senate service and tragic death. I may say, parenthetically, that this course was suggested in the days immediately following his death to the office of Senator Bennett but that nothing further was done on the specific suggestion of Mr. Lyle Ward, administrative assistant to the Senator.

Even so, this committee might, at its next meeting on July 14, 1954, still consider the possibility of a Senate gratuity, despite the fact that Mr. Holley did not have more than 1 month and 25 days of total Government service, exclusive of military service. If Senator Bennett or the widow of Mr. Holley feel that such a move would be beneficial I will be glad to see the matter is laid before the Committee on Rules and Administration. I doubt, however, if the Committee on Rules and Administration will consent to S. 3436 in view of the fact that its purposes do not comport with the gratuity formula already worked out by this committee.

You will be interested to know also that the committee files holds statements collected by the Architect of the Capitol on the incidents leading to Mr. Holley's death. There were, as a matter of fact, three separate investigations of the accident, the most exhaustive being done by the Architect with the assistance of the Metropolitan Police Department and Mr. John a. Dickinson, consulting elevator and mechanical engineer of the National Bureau of Standards. The accident scene was considerably photographed and all known witnesses were interviewed. As one consequence, certain strict standards were afterward set up for the use of freight elevators by custodial and Senate employees during and after office hours.

A review of the reports shows that apparently there was a joint failure on the part of Elmer Holley and the custodial employee, Raymond Johnson, to see that elevator No. 13, Senate Office Building, was actually at the first floor level when the door was opened by Johnson. There is also belief that Mr. Holley entered the open shaft pushing his loaded mail truck before him with some inattention and before he was aware that the door had been opened on an empty shaft. Because of the unusual arrangement of the wheels of the mail truck and because of its load, Mr. Holley was taken off balance immediately and was unable to pull back in time to keep from falling into the pit. It would appear, therefore, that though negligence might be imputed it could not be wholly described as "gross" to judge from records current on the accident.

The elevator was not found to be defective. It was demonstrated quite clearly that its doors were closed and locked in position, and were opened by an elevator emergency key, and that such key was in the hands of a person at the time properly authorized to have it.

In any event, the bill (S. 3436) will be laid before the committee at the next meeting to see if the members wish to comment on the proposals. At the same time the committee will be queried on whether or not it would approve some form of gratuity by resolution for the widow of Mr. Holley as an expression of the Senate's concern. I will be glad to advise you when this is done.

Sincerely,

WILLIAM E. JENNER,
Chairman, Committee on Rules and Administration.

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UNIV. OF MICH.

Calendar No. 475

84TH CONGRESS, 1st Session | SENATE | REPORT No. 471

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

ANN ARBOR CONSTRUCTION CO.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1033]

The Committee on the Judiciary, to which was referred the bill (S. 1033) for the relief of the Ann Arbor Construction Co., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 11, strike the words "in excess of 15 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay to the Ann Arbor Construction Co. the sum of $8,953.73, which has been found by the Court of Claims to be equitably due them pursuant to Senate Resolution 224, 82d Congress.

STATEMENT

In the 82d Congress a bill (S. 122) was filed providing for the relief of the above company, in the approximate amount of $18,000, for losses it allegedly had sustained as the result of the Army forcing it to move the location of its plant during the construction of the Willow Run airfield.

The committee adopted the procedure set forth in sections 1492 and 2509, title 28, United States Code, and referred the matter to the Court of Claims for a determination as to what amount, if any, the company was entitled, either legally or equitably.

The case has now been heard before the Court of Claims, and that court has reported back its finding that the company is equitably

entitled to the payment of $8,953.73. After reading the report of the Court of Claims, the committee agrees with its determination and, therefore, recommends enactment of the bill, as amended.

All of the facts in connection with the claim are fully set forth in the opinion of the court, which is appended in full below.

[In the United States Court of Claims, Congressional No. 17871 (Decided November 30, 1954)]

ANN ARBOR CONSTRUCTION COMPANY, A CONSTRUCTION SUPPLIES CORPORATION OF ANN ARBOR IN THE STATE OF MICHIGAN v. THE UNITED STATES

Mr. Harold Leventhal for the plaintiff. *Messrs. Ginsburg, Leventhal, and Brown and Messrs. Burke, Burke, and Smith* were on the brief.

Mr. Howard O. Sigmond, with whom was *Mr. Acting Assistant Attorney General J. Edward Williams*, for the defendant.

OPINION

LARAMORE, *Judge*, delivered the opinion of the court:

This is a congressional reference case referred to the Court of Claims by Senate Resolution 224, 82d Congress, 1st Session, with instructions to proceed in accordance with sections 1492 and 2509 of Title 28 of the United States Code.[1]

Pursuant to the aforementioned reference the plaintiff has filed its petition in this court seeking to recover the amount it spent in moving its concrete mixing plant.

From 1941 through 1943 plaintiff, as a materials supplier, furnished transit-mixed concrete to the prime contractor who had undertaken the building of Willow Run Bomber Plant. Originally it supplied this demand from its plant in Ann Arbor, Michigan, which is approximately 14 miles from the site of the Willow Run Bomber Plant.

In order to facilitate deliveries to Willow Run plaintiff secured a site for its transit-mixed concrete plant near Willow Run by lease dated May 31, 1941, from one Wiard for a term beginning May 10, 1941. The lease provided in part:

> The term of this lease shall be one year or the length of time required for the construction and completion of the so-called Bomber Plant, now being erected for the Ford Motor Company on the south side of Ecorse Road, whichever is the longer. The party of the second part is to remove all construction both above and below the ground and to place in as near the condition originally found as is possible including reseeding. The fences are to be reset.

Pursuant to the lease, the plaintiff corporation erected a concrete mixing plant on the new site, which we will refer to as Site 1. Said plant was portable, although certain facilities used in conjunction therewith were fixed installations.

In November of 1941 the Michigan State Highway Department undertook to construct access roads to the bomber plant. It notified plaintiff by letter dated November 19, 1941, that Site 1 was being purchased by the state. The letter reads in part as follows:

> We have been notified that you are leasing property in Washtenaw County from Lyman E. and Florence P. Wiard, which property is described as follows:
>
> * * * * *
>
> The Michigan State Highway Department is purchasing this property from Mr. and Mrs. Wiard for highway purposes in the vicinity, and as part of the consideration it has been agreed that your monthly payments on the lease are to be made to Mr. and Mrs. Wiard until May 10, 1942. If it is necessary

[1] Sec. 1492 reads as follows: "The Court of Claims shall have jurisdiction to report to either House of Congress on any bill referred to the court by such House, except a bill for a pension, and to render judgment if the claim against the United States represented by the referred bill is one over which the court has jurisdiction under other Acts of Congress."

Sec. 2509 reads as follows: "Whenever any bill, except for a pension, is referred to the Court of Claims by either House of Congress, such court shall proceed with the same in accordance with its rules and report to such House, the facts in the case, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy.

"The court shall all report conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant."

for you to use the property after May 10, 1942, payments should be made to the Michigan State Highway Department.

Will you please acknowledge receipt of this notice by signing in the space provided below, returning the signed copy of the letter to this office.

The letter was acknowledged by plaintiff.

On January 6, 1942, the State of Michigan filed a condemnation suit to secure possession of land needed for the proposed extension of the highway system, including the land occupied by plaintiff as Site 1.

The Highway Department notified the plaintiff of the necessity of moving from Site 1 by a letter dated January 16, 1942. The State was unable to obtain possession of all of the necessary rights-of-way within the time required by the highway construction program, without the assistance of the Federal Government under the Defense Highway Act.

On January 30, 1942, the Highway Department requested the Federal Government to secure immediate possession and title on behalf of the state of the additional land, including land hereafter referred to as Site 2. The United States condemned the land and was reimbursed by the state for the cost of the acquisition. The United States did not deliver a deed for the property to the State of Michigan until September of 1945.

In May 1942 the state and plaintiff entered into an oral agreement whereby plaintiff moved to Site 2, furnished by the State of Michigan, and the state reimbursed plaintiff $8,498.39 for its moving expenses from Site 1 to Site 2. The oral arrangements provided that the occupancy of Site 2 by plaintiff would be on the same rental and for the same terms as the lease plaintiff had for Site 1. Plaintiff paid the stipulated rent to the Highway Department until October 10, 1943.

In July 1942, the Army requested and received authority to use the area including Site 2 for a temporary hospital. The state was aware of plaintiff's occupancy at the time but apprehended no potential conflict between the uses. Pursuant to this authority the Army constructed a temporary hospital on Site 2.

Difficulties arose from the simultaneous use of Site 2 by plaintiff's plant and the Army's temporary hospital. The Army complained that the noise from plaintiff's plant disturbed the hospital patients. Plaintiff was willing to vacate Site 2 if the Army would reimburse its costs of so doing. The dispute was brought to the attention of the Highway Department of the State of Michigan which attempted to explain the situation to the Army by letter dated February 8, 1943, reading in part as follows:

> Second. It is apparent that two different permissions were given concerning this property, and that in the matter of the presence of the Ann Arbor Construction Company's buildings on the property, these two permissions overlap and are inconsistent. The permission given to the Army Air Corps to use the Area for contonment [sic] purposes was promised in a letter of July 15, 1942, written by State Highway Commissioner Kennedy to Lieutenant Colonel F. I. Kennedy, C. E. Division Real Estate Director, Chicago, and covers the entire area between old Ecorse Road, Wiard Road, the Ford Railroad spur, and our new Expressway on the north.
>
> However, prior to this by a matter of several months, the Chief Engineer of the State Highway Department, learning that the Ann Arbor Construction Company was occupying property on the west side of Wiard Road under written lease and that it was directly in line of the Expressway, required that Company to move to the Foster property on the east side of Wiard Road, and agreed that they might remain thereon until the completion of the Bomber Plant. That Company's rent is paid to May 10, 1943.
>
> This was an authoritative commitment by the Highway Department and it appears to me that the later permission to Lieutenant Colonel Kennedy in July 1942, is subject to the prior rights granted the Ann Arbor Construction Company by the Highway Department.
>
> Now as to the practical solution of this matter, I believe that the Ann Arbor Construction Company is getting very close to the end of its operations at that point and will vacate as soon as this time is at hand. Whether that will be before or after March 1, 1943, I have not yet been able to ascertain; but the Company has played a rather vital part in the furtherance of the project, is setting there on the strength of valid permission from this Department, and in all equity should not be disturbed in carrying out the last few weeks of its activities. I am sure that they will cooperate, as they have always done in the past, and that the entire matter will clear itself up in friendly fashion.

I am seeking expression from Mr. Osgood of that Company as to the earliest date when he can remove whereupon the land will be available for your use. Since his plant occupies only a small portion at the extreme northeast corner, there certainly will be no objection to your occupying and using the remainder of the area at once.

The discord continued between plaintiff and the Army over arrangements for plaintiff to vacate Site 2. Plaintiff was advised in writing by the Army on July 14, 1943, that it would deny plaintiff access to Site 2 unless by August 15 plaintiff submitted a certificate from responsible Federal authority that it was performing work essential to the war effort and to secure a pass to permit it to come within the enclosure. Later the Army extended to October 1, 1943, the date by which plaintiff was to complete its evacuation of Site 2.

Between August and October 1943 plaintiff moved its plant from Site 2 and by January 22, 1944, had reestablished it at a location in Ypsilanti, Michigan, which is referred to as Site 3.

Shortly after plaintiff moved its plant from Site 2 the Army moved its hospital from Site 2 to another location on the airport at Willow Run.

Willow Run was substantially completed as of June 12, 1943 and had been in actual production since 1942. However, plaintiff continued to the end of 1943 to furnish concrete for the construction then underway of additional structures included in the original plans for Willow Run. After October 1, 1943, plaintiff's deliveries of concrete were made from its production at Site 3.

The agreement under which plaintiff occupied Site 2 had no market value over and above the agreed rental. There was at the time an availability of alternate sites in greater proximity to Willow Run than Site 3. The evidence does not disclose why plaintiff chose Site 3 in preference to a site more advantageously situated, nor that plaintiff was imprudent in doing so.

Plaintiff never moved its plant back to Site 2 and the evidence does not indicate that the Highway Department of the State of Michigan ever requested plaintiff to do so or that either party considered that plaintiff was obligated to do so. There was no likelihood that plaintiff would voluntarily elect to vacate Site 2 prior to its agreed term of its occupancy, had the Army not compelled it to vacate.

Plaintiff's cost of moving its plant from Site 2 to Site 3 was $18,095.73. The reasonable cost of the move from Site 2 to Site 3, based on a complete stoppage of work, would have been $9,142, but the circumstances attending the move included the necessity for uninterrupted service and delivery of concrete during the time of the move. Under the circumstances attending the move $18,095.73 was a reasonable cost.

The defendant has raised several legal defenses, one of which is sufficient to prevent legal recovery in this court. The first of these is the statute of limitations. Any claim the plaintiff may have had arose at the very latest in October 1943, when plaintiff moved its plant from Site 2 to Site 3, or January 22, 1944, the date on which plaintiff had reestablished its plant at Site 3. Since the claim was not referred to this court by Congress until October 1951 and the petition was not filed until January 16, 1952, the claim would be barred by the 6-year limitation of 28 U. S. C. § 2501.

The second defense urged by the defendant is that the lease for Site 2 did not conform to the Michigan statute of frauds.

Plaintiff had a lease for Site 1. The State Highway Department acquired this site and notified plaintiff that after May 10, 1942, rent should be paid to the state. Thereafter the state took possession of Site 1 and notified plaintiff that it was necessary to terminate the lease as of May 10, 1942, and requested plaintiff to move. By *oral arrangements* between plaintiff and the state, the plaintiff moved to Site 2 on the same terms as plaintiff's lease for Site 1. The original lease provided that "The terms of this lease shall be one year or the length of time required for the construction and completion of the so-called Bomber Plant * * * whichever is longer." The defendant says the oral arrangements meant to cover a period of a year or more as the original lease provided, and were void because it was in violation of the Michigan statute of frauds [2] which provided that "Every contract for the leasing for a longer period than one year, * * * shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease * * * is to be made, or by some person thereunto by him lawfully authorized in writing; * * *."

The third defense urged by defendant is that plaintiff has no legal or equitable right to recover moving expenses.

[2] Vol. 19, Mich. Stat. Ann., § 26.908.

Whether or not plaintiff occupied the site under the terms of the original written lease, or as a permissive user, would not alter plaintiff's right to the occupancy of this land as opposed to the right of the Army. At the very least plaintiff's occupancy was under the same terms and conditions as that of the Army; *i. e.*, by permission of the Michigan State Highway Department. Plaintiff was occupying the site and his business was established by the time the Army's request to use the property in question was granted. It had a right to the occupancy of this land invaded by the Army which was superior to the right of any third person to oust it.

The record shows that if plaintiff had not been wrongfully dispossessed by the defendant, it could have continued in possession since the land has never been appropriated to different purposes and is still vacant. The rule of damages in cases of this kind is that damages should be such as will put plaintiff in the same condition he would have been if the injury had not been committed.

More specifically, the rule is that where removal is made necessary by the wrongful act of defendant plaintiff is entitled to recover the expenses of removal. 52 Am. Jur. 873; 63 C. J. 1039; 26 R. C. L. 974, and cases cited therein.

Applying this rule to the facts in this case, it is clear that the expenses of the unnecessary move should be borne by the defendant.

The defendant further urges that the military commanding officer was not authorized to make the representations and requests which resulted in plaintiff's moving from Site 2. That fact is not established by the record.

CONCLUSION

Plaintiff's claim is barred by the 6-year statute of limitations which is sufficient to prevent legal recovery in this court. Lifting the bar of the statute of limitations would operate to create a legal obligation on the part of the Government to provide moving expenses.

The facts show that plaintiff was engaged in supplying concrete at the site of a defense project and was forced to move its plant by reason of action of the Army. While it is a fact that plaintiff would have eventually had to move from Site 2 and bear the expense of moving, it did, in furtherance of the defense effort, continue its operations during the time of moving and was put to additional expense thereby. The evidence shows that the cost of moving was $18,095.73. The reasonable cost of the move, based on a complete stoppage of work, would have been $9,142. Therefore, because of the necessity for uninterrupted service and delivery of concrete during the move, plaintiff was put to the additional expense of $8,953.73.

While there is no obligation that can be enforced against the Government in this court because of the 6-year statute of limitations, we recommend a payment of $8,953.73 which in the light of all the facts of record seems to us to be fair and reasonable.

This opinion and the findings of fact, together with the conclusions thereon, will be certified to Congress pursuant to Senate Resolution 224, 82d Congress, 1st Session.

MADDEN, *Judge;* WHITAKER, *Judge;* LITTLETON, *Judge;* and JONES, *Chief Judge,* concur.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner C. Murray Bernhardt, and the briefs and argument of counsel, makes findings of fact as follows:

1. Plaintiff's petition was filed January 16, 1952, pursuant to the following Senate Resolution 224, adopted by the Senate of the United States October 19, 1951:

> *Resolved*, That the bill (S. 122) for the relief of the Ann Arbor Construction Company, now pending in the Senate, together with all the accompanying papers, is hereby referred to the Court of Claims; and the court shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28 of the United States Code and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, and the amount, if any, legally or equitably due from the United States to the claimant.

2. Plaintiff is a Michigan corporation with its principal place of business in Ann Arbor, Michigan.

3. From 1941 through 1943 plaintiff, as a material supplier, furnished transit mixed concrete at the site of the defense project known as the Willow Run Bomber Plant (hereafter Willow Run).

4. *a.* In order to facilitate deliveries to Willow Run, which was 14 miles from its Ann Arbor plant, plaintiff secured a site (hereafter Site 1) for its transit mixed concrete plant near Willow Run by lease dated May 31, 1941, from one Wiard for a term beginning May 10, 1941. The lease provided in part:

> The term of this lease shall be one year or the length of time required for the construction and completion of the so-called Bomber Plant, now being erected for the Ford Motor Company on the south side of Ecorse Road, whichever is the longer. The party of the second part is to remove all construction both above and below the ground and to place in as near the condition originally found as is possible including reseeding. The fences are to be reset.

b. Thereafter plaintiff installed a transit mixed concrete plant on Site 1. Such a plant is portable, although certain facilities used in conjunction therewith are fixed installations.

5. The State of Michigan through its State Highway Department (hereafter Highway Department) undertook to develop a series of defense highways to serve Willow Run. In the course of laying out the highway system it became apparent that it would transect plaintiff's transit mixed concrete plant on Site 1.

6. In connection with securing the extension of the highway system serving Willow Run, the Highway Department sent a letter to plaintiff dated November 19, 1941, reading in part as follows:

> We have been notified that you are leasing property in Washtenaw County from Lyman E. and Florence P. Wiard, which property is described as follows:
>
> * * * * *
>
> The Michigan State Highway Department is purchasing this property from Mr. and Mrs. Wiard for highway purposes in the vicinity, and as part of the consideration it has been agreed that your monthly payments on the lease are to be made to Mr. and Mrs. Wiard until May 10, 1942. If it is necessary for you to use the property after May 10, 1942, payments should be made to the Michigan State Highway Department.
>
> Will you please acknowledge receipt of this notice by signing in the space provided below, returning the signed copy of the letter to this office.

The letter was acknowledged by plaintiff.

7. On January 6, 1942, the State of Michigan filed a condemnation suit to secure possession of land needed for the proposed extension of the highway system, including the land occupied by plaintiff as Site 1 as well as land later occupied by plaintiff as Site 2, as will appear.

8. The Highway Department notified the plaintiff of the Necessity of moving from Site 1 by a letter dated January 16, 1942, reading as follows:

> On November 19, 1941, we notified you that the State Highway Department purchased property in Washtenaw County formerly owned by Lyman E. and Florence P. Wiard, on which parcel you held a lease for the purpose of operating a Transit Mixed Concrete Plant.
>
> We are informed by our engineer that this parcel will be needed for construction purposes early this Spring, and it will be necessary to terminate the lease on May 10, 1942, the date set up in the instrument.
>
> Would it be possible for you to move your Plant to some other location and inform us when you have done so?

9. *a.* It became apparent that the Highway Department could not secure possession and title to all of the land needed for the access roads to Willow Run with required promptness without the assistance of the Federal Government under the Defense Highway Act. Therefore, on January 30, 1942, the Highway Department requested that the Federal Government secure immediate possession and title on behalf of the State of the additional land, including land referred to herein as Site 2. Subsequently, a Federal condemnation proceeding was instituted and a declaration of taking filed, the estimated just compensation deposited into court, and a fee simple legal title to the property referred to herein as Site 2 vested in the United States of America in March 1942. The condemnation documents of record do not divulge unaided that title to the property was taken by the United States Government for the benefit of the State.

(*b*) Although the State of Michigan promptly reimbursed the United States Government for the latter's payment of just compensation to the owners of the property taken, formal delivery of title to the property to the Highway Depart-

ment was not made until September 1945, due to certain intervening delays not here material.

10. *a.* On or about May 10, 1942, plaintiff, at the request of the Highway Department, vacated Site 1 and moved its plant to Site 2, which was nearby, and was subsequently reimbursed by the State in the amount of $8,498.39 for its moving expenses. The oral arrangement between the Highway Department and plaintiff covering the latter's occupancy of Site 2 provided that the terms would be the same as the lease covering plaintiff's occupancy of Site 1.

b. Plaintiff paid the stiuplated rent to the Highway Department until October 10, 1943.

11. By letter dated July 15, 1942, the Highway Department granted the Army's request to use certain described property which included Site 2 for the duration of the war and six months thereafter. No mention was made in the letter as to plaintiff's tenancy. The Highway Department was aware of plaintiff's occupancy at the time but apprehended no potential conflict between the uses. Pursuant to this authority, the Army constructed a temporary hospital facility on Site 2.

12. Difficulties arose from the simultaneous use of Site 2 by plaintiff's plant and the Army's temproary hospital, and resulted in an exchange of correspondence and frequent requests from the Army to the plaintiff to move from the site. The Army complained that the noise form plaintiff's plant disturbed the hospital patients. Plaintiff was willing to vacate Site 2 if the Army would reimburse its costs of so doing. The dispute was brought to the attention of the Highway Department which attempted to explain the situation to the Army by a letter dated February 8, 1943, reading in part:

> Second, It is apparent that two different permissions were given concerning this property, and that in the matter of the presence of the Ann Arbor Construction Company's buildings on the property, these two permissions overlap and are inconsistent. The permission given to the Army Air Corps to use the Area for contonment [sic] purposes was promised in a letter of July 15, 1942, written by State Highway Commissioner Kennedy to Lieutenant Colonel F. I. Kennedy, C. E. Division Real Estate Director, Chicago, and covers the entire area between old Ecorse Road, Wiard Road, the Ford Railroad spur, and our new Expressway on the north.
>
> However, prior to this by a matter of several months, the Chief Engineer of the State Highway Department, learning that the Ann Arbor Construction Company was occupying property on the west side of Wiard Road under written lease and that it was directly in line of the Expressway, required that Company to move to the Foster property on the east side of Wiard Road, and agreed that they might remain thereon until the completion of the Bomber Plant. That Company's rent is paid to May 10, 1943.
>
> This was an authoritative commitment by the Highway Department and it appears to me that the later permission to Lieutenant Colonel Kennedy in July, 1942, is subject to the prior rights granted the Ann Arbor Construction Company by the Highway Department.
>
> Now as to the practical solution of this matter, I believe that the Ann Arbor Construction Company is getting very close to the end of its operations at that point and will vacate as soon as this time is at hand. Whether that will be before or after March 1, 1943, I have not yet been able to ascertain; but the Company has played a rather vital part in the furtherance of the project, is setting there on the strength of valid permission from this Department, and in all equity should not be disturbed in carrying out the last few weeks of its activities. I am sure that they will cooperate, as they have always done in the past, and that the entire matter will clear itself up in friendly fashion.
>
> I am seeking expression from Mr. Osgood of that Company as to the earliest date when he can remove whereupon the land will be available for your use. Since his plant occupies only a small portion at the extreme northeast corner there certainly will be no objection to your occupying and using the remainder of the area at once.

13. The discord continued between plaintiff and the Army over arrangements for plaintiff to vacate Site 2. Plaintiff was advised in writing by the Army on July 14, 1943, that if would deny plaintiff access to Site 2 unless, by August 15, plaintiff submitted a certificate from responsible Federal authority that its contract operations were essential to the war effort, that the major part of the plant's production was so engaged, that replacement was impossible, and would also submit an estimate as to when plaintiff's contract operations would be completed. Later the Army extended to October 1, 1943, the date by which plaintiff was to

complete its evacuation of Site 2. These representations on behalf of the Army were made to plaintiff pursuant to instructions of the military commanding officer of that area, through his subordinates, but the record does not establish the authority of the commanding officer to negotiate such arrangements.

14. Between August and October 1943, plaintiff moved its plant from Site 2 and, by January 22, 1944, had reestablished it at a location in Ypsilanti, Michigan, referred to hereafter as Site 3. Site 3 involved from 2½ to 4½ miles in additional shipping distances in deliveries of concrete by plaintiff to various points at Willow Run, but for the most part the greater costs resulting from the longer hauls were absorbed by higher prices. Plaintiff was still in production at Site 3 at the time of the hearing in this case.

15. Shortly after plaintiff moved its plant from Site 2, the Army moved its hospital from Site 2 to another location on the airport at Willow Run.

16. While Willow Run was substantially completed as of June 12, 1943, and had been in actual production since 1942, plaintiff continued to the end of 1943 to furnish concrete for the construction then under way of additional structures included in the original plans for Willow Run. After October 1, 1943, plaintiff's deliveries of concrete were made from its production at Site 3.

17. The agreement under which plaintiff occupied Site 2 had no market value over and above the agreed rental. There was at the time an availability of alternate sites of comparable rental value in greater proximity to Willow Run than Site 3. The evidence does not disclose why plaintiff chose Site 3 in preference to a site more advantageously situated, nor that plaintiff was imprudent in doing so.

18. Plaintiff never moved its plant back to Site 2. The evidence does not indicate that the Highway Department ever requested plaintiff to do so or that either party considered plaintiff was obligated to do so. The evidence discloses no likelihood that plaintiff would have voluntarily elected to vacate Site 2 prior to the agreed term of its occupancy had the Army not compelled it to vacate.

19. Plaintiff's cost in moving its plant from Site 2 to Site 3 was $18,095.73. The reasonable cost of the move from Site 2 to Site 3 based on a complete stoppage of work would have been $9,142, but the circumstances attending the move included the necessity for uninterrupted service and delivery of concrete during the time of the move. Under the circumstances attending the move, $18,095.73 was a reasonable cost. The evidence does not disclose what the reasonable cost would have been had plaintiff moved to a location closer to Site 2 than was Site 3.

20. Plaintiff's requests for reimbursement in the amount of $18,095.73 were refused by the Army and the Comptroller General.

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84TH CONGRESS, 1st Session } SENATE { REPORT No. 472

JUN 16 1955
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MILTON BEATTY AND OTHERS

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 175]

The Committee on the Judiciary, to which was referred the bill (S. 175) to provide for the relief of Milton Beatty and others by providing for determination and settlement of certain claims of former owners of lands and improvements purchased by the United States in connection with the Canyon Ferry Reservoir project, Montana, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 4, strike out all of section 3, and insert in lieu thereof the following:

SEC. 3. The owners of the lands situated in Broadwater and Lewis and Clark Counties, Montana, which were purchased by the United States in connection with the Canyon Ferry Reservoir project are as follows: Milton Beatty, Ruth Blakely, Ruth M. Bremer, Douglas P. Christie, George H. Christie, W. J. Gaab, Herb Gill, Charles P. Hadcock, W. R. Hardgrove, W. G. Kirscher, D. E. Mahoney, Jerome Merritt, Joseph Meyer, Mrs. Edwin D. Neild, John A. Plymale, John G. Plymale, Paul Plymale, Mary M. Prosser, William Prosser, Blanche E. Riley, Jessie C. Riley, Mr. and Mrs. John Riley, Peter Riley, and William P. Sullivan, all of Townsend, Montana; Carrol G. Filson, 418 North Benton Avenue, Helena, Montana, Mary C. Johnson, Harvey Hotel, Helena, Montana, E. J. Kane, 522 North Park, Helena, Montana, and D. B. Filson, of Winston, Montana.

2. On page 5, lines 16 and 17, strike the words "for the payment of any one claim in excess of 10 per centum thereof".

PURPOSE OF AMENDMENTS

The purpose of the first amendment is to add the names which appear in the letter from one of the sponsors, which is attached to this report.

The purpose of the second amendment is to eliminate attorney's fees in connection with this claim.

PURPOSE

The purpose of the proposed legislation, as amended, is to provide for the establishment of a board of appraisal composed of three members to be appointed by the Secretary of the Interior and the Secretary of Agriculture and the Chief Judge of the United States Court of the District of Montana to appraise the lands secured by the United States from the persons named in section 3 of the bill for the purpose of determining whether or not such persons received fair and adequate compensation for their lands. The bill further provides that should there be reasonable amounts found owing to such persons, the amounts thereof shall be certified to the Secretary of the Treasury for payment, and the Secretary of the Treasury is authorized to make such payment.

STATEMENT

A similar bill, S. 3154, was reported by the committee in the 83d Congress and passed the Senate on June 15, 1954, but no action was taken by the House of Representatives.

Hearings were held on the previous bill of the 83d Congress before a subcommittee of the Committee on the Judiciary on June 4, 1954, in which Senator Murray, Senator Mansfield, and Congressman Metcalf, all of Montana, appeared. As it appears from the record, the bill is to relieve an injustice to certain landowners in Broadwater and Lewis and Clark Counties, Mont., named in the bill, whose land was taken by the Federal Government in the course of construction of the Canyon Ferry Dam.

Congressman Metcalf held a hearing on this matter on October 15, 1953, the transcript of the hearing being made a part of the files of the Committee on the Judiciary. In testifying before the subcommittee, Congressman Metcalf stated the facts of the case as follows:

> The complaints about misrepresentation and discrimination in prices paid for land of approximately equal value prompted me to request the Bureau of Reclamation to assist him in holding a hearing to ascertain the actual facts. I held a hearing on October 15, 1953, with the cooperation of the Bureau. The transcript of the hearing is here available as well as other statements on this controversy.
>
> The facts as elicited from this record and from correspondence the Montana delegation to Congress has had from interested individuals are as follows:
>
> When it was learned that extensive land acquisitions would be made in Broadwater County, Mont., to provide the lake behind Canyon Ferry Dam, a meeting was held on April 10, 1949, in the courthouse at the county seat in Townsend. One of the construction engineers made a memorandum of what was said at that meeting and a copy of that memorandum is an exhibit (E) in the Montana hearing.
>
> There is substantial agreement as to what occurred at that mass meeting at which representatives of the Government were present. However, the Bureau of Reclamation insists that people of Broadwater County misunderstood the Government's statement of its land acquisition policy. But all of the landowners agree on the gist of the Government's statement.
>
> An example of the landowner's understanding of the procedure is the statement of Mr. Hardgrove on page 40 of the transcript. He says that Mr. McCormick, the regional land officer, stated, "All this ground has been appraised by competent appraisers, there would be one set price, and that would be it, and that the only way you could change that price, unless there was a gradual increase in land value, was to wait until we condemn your ground."
>
> So in November when the buyer met with these people in most cases there was very little negotiating. They accepted the price that was offered. As one of them said, "I figured I was dealing with a man employed by the United States Government."

It was only after they compared the prices received for their land and attempted to buy other land to replace the land taken that they found that there was a wide differentiation and they began to express their resentment.

The Bureau of Reclamation contends that when proper consideration is given to the date of taking, improvements, severance damage, and other factors affecting fair market value and the prices paid compare favorably.

This was not borne out by the testimony. Two adjoining parcels of land were purchased within 10 days of each other, improvements about the same and fertility and crop history identical. One parcel sold for $158 per acre, the other for $300 per acre. The transcript contains many such examples. Those who didn't accept the Government's final offer but who went to condemnation received even more.

Now if this was a case of individuals dealing in the open market where one wanted to sell and the other to buy such discrepancies would not be grounds for complaint. But the Broadwater County landowners were not in that category.

Most of them were born in the area. Some of them were the third generation on their farms. Some of the abstracts had only the original patent and no other transfers except probate proceedings. They didn't want to sell, they weren't seeking buyers and they hadn't had an estimate of the value of land for years. They accepted the enforced sale and relief on their Government to deal fairly with them. The people who were the most cooperative received the least.

The Government has a twofold obligation when taking land under eminent domain. It has an obligation to the taxpayer to pay a price for the land that is not excessive and an obligation to the landowner to treat him fairly. This second obligation was not met in this case.

There is not a charge of misrepresentation that will sustain a case in the Court of Claims. But good citizens have suffered substantial losses and they should be reimbursed. This is the only way in which it can be done.

The committee, upon the basis of the testimony offered, believes that there are sufficient grounds to indicate that the landowners were not dealt with on as uniform a basis in respect to the amounts received by each of them as would seem desirable. There is evidence to indicate that parcels of land substantially the same were obtained at considerable variance in price, by the Government. The committee is somewhat at a loss to understand why this situation should exist and believes that the matter should be looked into in order to determine just what, if any, injustice may have been done. The committee therefore recommends this legislation as being meritorious and adheres to its former recommendation and reports S. 175, as amended, to the Senate for its favorable consideration.

The reports from the Department of Justice, Administrative Office of the United States Courts, Department of Agriculture, and Department of the Interior on S. 3154, 83d Congress, are attached hereto and made a part of this report.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, May 6, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 3154) "To provide for the relief of Milton Beatty and others by providing for determination and settlement of certain claims of former owners of lands and improvements purchased by the United States in connection with the Canyon Ferry Reservoir project, Montana."

The bill would establish a board of appraisers to determine the fair value of certain lands and improvements purchased by the United States in connection with the Canyon Ferry Reservoir project in Broadwater and Lewis and Clark

Counties, Mont. Board determinations would be arrived at with the concurrence of all members of the board and the board would certify to the Secretary of the Treasury the amount which the United States should pay to each of the former owners enumerated in the bill.

This Department has no information which would justify the reopening of these apparently closed voluntary transactions in which the Government negotiated and purchased lands or interests directly from the landowners without resort to condemnation proceedings. The Government has contracted in the past with large numbers of people for direct purchase of lands and interests. Exceedingly large amounts of money are involved. Insofar as this Department is advised, there appear to be no exceptional circumstances, or injustices arising out of Government action involved in the cases enumerated in the bill which would distinguish them equitably from the many other cases of Government purchase contractors who have no legitimate claim against the Government. To pay the beneficiaries of the bill additional sums would create a highly undesirable precedent.

Accordingly, the Department of Justice is unable to recommend enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., April 30, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR LANGER: This is in reply to your request of March 24, 1954, for a report on S. 3154, a bill to provide for the relief of Milton Beatty and others by providing for determination and settlement of certain claims of former owners of lands and improvements purchased by the United States in connection with the Canyon Ferry Reservoir project, Montana.

The bill authorizes the establishment of a board of appraisers to make an independent appraisal of lands previously acquired by the United States in connection with the Canyon Ferry Reservoir project and payment by the United States Treasury of any amounts determined justified over and above amounts previously paid to the parties involved at the time such lands were acquired. The bill also provides that the board of appraisers shall include an officer or employee of the Land Acquisition Division, Bureau of Reclamation, Department of the Interior, appointed by the Secretary of the Interior; one member to be an officer or employee of the Extension Service of the Department of Agriculture, appointed by the Secretary of Agriculture, and one member from private life qualified as an impartial appraiser.

This Department has had no official responsibilities with respect to this project and has no materials in its files bearing directly upon it. Therefore, we feel we have no basis for recommending with respect to the merits of this particular bill.

If the Congress deems it appropriate to enact such legislation and desires the participation of a member of the staff of the Department of Agriculture to serve on the proposed board of appraisers, we shall be glad to cooperate. However, we feel it advisable to indicate that staff members of the Extension Service are not engaged in land acquisition or formal land appraisal work. We would suggest, therefore, your committee might wish to give consideration to eliminating the phrase "of the Extension Service" in line 10, section 2 (a) of the bill, thus permitting the Secretary to designate such officer or employee of the Department as would appear to be best qualified by virtue of experience and other qualifications to serve on this appraisal board.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON, *Secretary.*

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D. C., April 12, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR LANGER: The bill about which you have inquired of me on March 24, 1954 (S. 3154) provides for the payment to persons specified in section 3 of the act and referred to as owners of the lands situated in Broadwater and Lewis and Clark Counties, Mont., which were purchased by the United States in connection with the Canyon Ferry Reservoir project, of amounts in full settlement of all claims against the United States to be determined by a board of appraisers. Section 2 provides that the board of appraisers shall consist of 3 members including 1 member from private life who is qualified as an impartial appraiser with respect to farm and grazing lands and improvements in Montana, selected by the Chief Judge of the United States District Court for the District of Montana, acting in his individual capacity.

The bill provides for an unusual procedure for fixing the compensation of land purchased by the United States from the owners named in section 3. I am without sufficient information concerning the background and the reasons for it to warrant me in expressing an opinion on the subject.

With kind regards, I am,

Sincerely yours,

HENRY P. CHANDLER.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 12, 1954.

Hon. WILLIAM LANGER,
Committee on the Judiciary, United States Senate,
Washington, D. C.

MY DEAR SENATOR LANGER: This is in response to your request for this Department's comments on S. 3154, a bill to provide for the relief of Milton Beatty and others by providing for determination and settlement of certain claims of former owners of lands and improvements purchased by the United States in connection with the Canyon Ferry Reservoir project, Montana.

This bill, if enacted, would direct the Secretary of the Treasury to pay to the 18 parties named in its section 3 the difference between the price which has already been paid them by the United States for lands and improvements which were acquired in connection with the development of the Canyon Ferry Dam and Reservoir and such price as may be fixed by a new appraisal to be made by a board of 3 members, 1 appointed by the Secretary of the Interior, 1 by the Secretary of Agriculture, and 1 by the Chief Judge of the United States District Court for the District of Montana.

The list of persons named in section 3 of the bill is but a partial list of persons from whom the United States purchased properties for the Canyon Ferry Dam and Reservoir. It also includes the names of three persons (Douglas P. Christie, John A. Plymale, and Paul Plymale) from whom, according to the records of this Department, no purchase was made.

All of the property to which the bill would apply was purchased by the United States at fair market value, pursuant to the terms and conditions of individually negotiated, regularly executed land purchase contracts. The market value of each particular tract or parcel, with its improvements, was determined by competent appraisers. None of the Government's vendors, as far as we are advised, contends that his particular transaction was not closed and completed in accordance with the provisions of the contract. Each appears, therefore, to seek an additional amount—a bonus as it were—from the United States above the contract price. This amount is erroneously characterized in section 1 of the bill as being "in full settlement of all claims of such party against the United States arising out of the purchase from such party by the United States of lands and improvements thereon, in connection with the Canyon Ferry Reservoir project, Broadwater and Lewis and Clark Counties, Mont."

If these parties have, as we believe they do not have, a valid claim against the United States arising out of the land purchase contract, redress may be had in the courts of the United States under the Tucker Act, as amended and supplemented, without the special privilege which would be granted by the bill. We are unaware of any special circumstances or equitable considerations in their

cases which entitle them to ask of the Congress a revaluation of their properties and a payment in excess of the amount for which they agreed to sell, and did sell, their properties. Not having availed themselves, as they could have if they were dissatisfied with the prices offered them, of the privilege of having a judicial determination made of the value of their properties at the time of the transaction, we can see no merit to their being given the consideration they now ask in another forum. Particularly is this so in a case like the present where changed conditions caused by the removal of improvements and the flooding of the land have made it impossible for anyone to make an estimate of fair market value of the land and improvements as of the date of payment by the United States of the agreed purchase price.

Although what has already been said is enough, I believe, to indicate the lack of merit in S. 3154, I must also point out that its enactment would establish a precedent under which all the United States land purchase contracts could, at the behest of any vendor who later becomes dissatisfied with the bargain he made, be regarded as lacking that finality which is as important to the conduct of public business as it is normal to conventional business transactions.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

UNITED STATES SENATE,
Washington, D. C., February 17, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: With regard to S. 175 which Senator Murray and I have introduced, will say that I would like to call to your attention the following names which we would like to have included in this bill when, and if, action is taken by your committee:

Charles P. Hadcock, Townsend, Mont.
Mary M. Prosser, Townsend, Mont.
William Prosser, Townsend, Mont.
Blanche E. Riley, Townsend, Mont.
Mr. and Mrs. John Riley, Townsend, Mont.
Peter Riley, Townsend, Mont.
William P. Sullivan, Townsend, Mont.
D. B. Filson, Winston, Mont.

These are individuals who have contacted Congressman Metcalf since the introduction of the bill and due to their claims, we would like for their names to be included in the bill. Will you please have this made part of your record.

Thanking you and with best personal wishes, I am,

Sincerely yours,

MIKE MANSFIELD.

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JUN 16 1955
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Calendar No. 477

84TH CONGRESS, 1st Session | SENATE | REPORT No. 473

L. S. GOEDEKE

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1002]

The Committee on the Judiciary, to which was referred the bill (H. R. 1002) for the relief of L. S. Goedeke, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the sum of $1,000 to L. S. Goedeke, of Roswell, N. Mex., in full settlement of all his claims against the United States. Such payment represents the cost of one hangar which was destroyed by the Army Air Force at Fort Sumner, N. Mex., in late 1942.

STATEMENT

The records of the Department of the Army disclose that in 1939 the claimant obtained verbal permission from the mayor and city attorney of the village of Fort Sumner, N. Mex., to establish a small aircraft hangar and flying school at the local municipal airport. Acting upon this authorization, Mr. Goedeke erected at the airport site a hangar 60 feet by 40 feet with a 40-foot door opening at one end, constructed of wood timbers and rafters, with corrugated-iron sides and roof, and based on an asphalt floor with concrete foundation. The land upon which the hangar was placed was owned by the State of New Mexico and leased to the village of Fort Sumner.

The records of the Department of the Army further disclose that in 1942 the Government proceeded to establish a glider school at the municipal airport of the village of Fort Sumner, and, by duly adopted resolution, the village of Fort Sumner granted a right-of-entry to the

Government effective July 2, 1942. The airport was taken over and operated by the Army Air Force for military purposes for the term beginning July 2, 1942, under a lease entered into between the village and the Government dated October 14, 1942.

Shortly after the Army Air Force established the glider school at the airport, it was determined that the hangar previously erected on the premises by the claimant was useless from a military standpoint and the building was subsequently demolished.

The airfield was utilized by the Army Air Force Glider School during the war and was subsequently declared surplus and finally transferred by the Corps of Engineers to the War Assets Administration on March 16, 1947.

The committee is advised that the military records in this case fail to identify or indicate any interest held by the claimant at the time of the granting of the municipal-airport lease to the Government. The claimant states that an Army officer made certain verbal commitments to him relative to the use of the hangar and its subsequent removal from the airfield by that Department. Inasmuch as no formal agreement was entered into between the claimant and the United States officer, there is no documentary proof relative to the matter. The claim of Mr. Goedeke cannot be administratively determined under the provisions of the act of July 3, 1943 (57 Stat. 372), as amended, because it is barred by the statute of limitations.

The Department of the Army, in reporting on an identical bill of the 83d Congress, stated, in part, as follows:

> The evidence in this case shows that the claimant owned the building placed on State land leased to the village of Fort Sumner; that the claimant had verbal permission from the village of Fort Sumner to place the building; that the building was on the land at the time of the installation of the Army Air Force Glider School; and that the building was demolished by the military authorities. The destruction of the building has resulted in a loss to the claimant, and in view of all the facts and circumstances it is believed that compensation in a reasonable amount may be awarded. The proposed award of $1,000 stated in the subject bill, H. R. 9871, appears to be fair and reasonable. The Department, accordingly, has no objection to the enactment of the bill.

The committee is in agreement with the Department of the Army that this claim be favorably considered. The evidence discloses that the claimant had built this hangar and invested his time and money, with the understanding that he would have the right to remove the hangar and he was deprived of this right by the Air Force demolishing the building. The committee believes that the claimant should be reimbursed in the amount stated in the bill and, therefore, recommends favorable consideration of H. R. 1002.

Attached hereto and made a part hereof is the report of the Department of the Army submitted on an identical bill of the 83d Congress, and other evidentiary data relating to this claim.

NOVEMBER 22, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter inclosing a copy of H. R. 9871, 83d Congress, a bill for the relief of L. F. Goedeke, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated,

the sum of $1,000 to L. F. Goedeke, of Roswell, New Mexico, in full settlement of all claims against the United States. Such payment represent the cost of one hangar which was destroyed by the Army Air Force at Fort Sumner, New Mexico, in late 1942".

It appears that in 1939, Mr. L. (Leonard) S. Goedeke obtained verbal permission from the mayor and city attorney of the village of Fort Sumner, N. Mex., to establish a small-aircraft hangar and flying school at the local municipal airport. Pursuant to this authorization, Mr. Goedeke caused to be erected at the airport site a hangar 60 feet by 40 feet with a 40-foot door opening at one end, constructed of wood timbers and rafters with corrugated-iron sides and roof, and based on an asphalt floor with concrete foundation. The land upon which the hangar was placed was owned by the State of New Mexico and leased to the village of Fort Sumner.

The records of the Department show that in 1942 the Government proceeded to establish a glider school at the municipal airport of the village of Fort Sumner and by duly adopted resolution, the village of Fort Sumner granted a right-of-entry to the Government, effective July 2, 1942. The municipal airport of the village of Fort Sumner was taken over and operated by the Army Air Force for military purposes for the term beginning July 2, 1942, under a lease entered into between the village and the Government dated October 14, 1942.

It further appears that shortly after the Army Air Force established the glider school at the municipal airport at Fort Sumner in 1942, it was determined that the hangar previously erected on the premises by Mr. Goedeke was useless from a military standpoint and the building was demolished.

The airfield was utilized by the Army Air Force Glider School during the war, was subsequently declared surplus, and was finally transferred by the Corps of Engineers to the War Assets Administration on March 16, 1947.

Relative to the hangar and its destruction, Mr. and Mrs. Leonard S. Goedeke of Roswell, New Mexico, presented the following information for consideration by the Department—

Letter dated October 10, 1953:

"We had a small flying school there before the war and when the Army moved in we gave them permission to use our hangar which we built as their maintenance shop until they got their's built. They used it 6 months free of charge and were to move it for us when they were through with it, in good condition. Instead they called me [Mrs. Goedeke] and gave me only 2 hours to get it moved and had already torn it down, cut it up, and burned all except the tin roof when I got a truck out there. We have found out just recently that we are entitled to a claim on it, * * *"

Letter dated October 19, 1953:

"I am going to give all the information as nearly right that I can. However it has been so long ago I will more or less have to estimate on the exact cost of the lumber and labor. Leonard knew the exact size and the type of lumber, etc.

"Hangar size was 60 feet long, 40 feet wide, 14 feet high, 40-foot door opening, covered with corrugated iron.

"Cost of material and asphalt floor, $575.

"Cost of labor we paid to carpenters, $375.

"Also Leonard was out the expense of taking our truck and trailer to Mountainair to get 4 large timbers 45 feet long that were used in the construction of the hangar, to say nothing of the labor he put out on it, he worked with the carpenters all the time they were building it. This all totals approximately $1,000 but now it would cost 3 times as much to replace it, as it was built in 1939 and materials were much cheaper. The reason for us not entering a claim sooner was because the property we built the hangar on was a State-owned school section leased to the city of Fort Sumner, and they had given us permission to build it there, and we were under the impression that we could not file claim for this reason, but recently we learned we were entitled to it regardless of where it was. Had we known that the Army would not turn it back to us torn down in good condition as the commanding officer of the base at that time had promised we would have had it in writing then we would have made a claim sooner. As I wrote you in the first letter, I don't remember if I gave you the names of the commanding officer or not, but Colonel Anderson was the one that asked permission to use the hangar until they got a workshop built, and Colonel Dailey was commanding officer when they tore it down and burned it. Also 2 hours notice isn't very much time when trucks were as hard to get hold of as they were during the war, also they had cut it up instead of taking it apart. Leonard was having to instruct for Army primary in Coleman, Tex., at the time, and we had the contract on the aviation gasoline out there, and I was in contact with them every day, so there

was no excuse why the notice had to be so short. The reason we were so anxious to get it back in good shape we had intended moving it and using it as a hay barn on Mrs. Goedeke's farm in the valley there. However she has sold it now.

"I believe the claim should be L. S. Goedeke as claimant."

The military records in this case fail to identify or indicate any interest held by Mr. and Mrs. Goedeke at the time of the granting of the municipal airport lease to the Government. Mr. Goedeke states that an Army officer made certain verbal commitments to him relative to the use of the hangar and its subsequent removal from the airfield. No formal agreement was entered into between Mr. Goedeke and the alleged officer, therefore, there is no documentary proof relative to the matter. It is a well established principle of law that individuals, in dealing with Government officers, must take notice of authority conferred upon them by law, and where the Government officer has no authority to contract in the matter, no contract, implied or otherwise, can be created. Consideration of a claim under the provisions of the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), as amended, the only statute available to the Department under which a claim of this nature may be considered, is barred by statutory limitation.

The evidence in this case shows that the claimant owned the building placed on State land leased to the village of Fort Sumner; that the claimant had verbal permission from the village of Fort Sumner to place the building; that the building was on the land at the time of the installation of the Army Air Force Glider School; and that the building was demolished by the military authorities. The destruction of the building has resulted in a loss to the claimant, and in view of all the facts and circumstances it is believed that compensation in a reasonable amount may be awarded. The proposed award of $1,000 stated in the subject bill, H. R. 9871, appears to be fair and reasonable. The Department, accordingly, has no objection to the enactment of the bill. If this bill is favorably considered it is recommended that the name in the title and text of the bill be corrected to read "L. S. Goedeke" and that the word "represent" appearing on line 8 of the bill be changed to "represents."

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

STATE OF NEW MEXICO,
County of Chaves, ss:

Leonard Goedeke and Myrtle Goedeke, husband and wife, each being duly sworn, on oath state:

That they were the owners of a hangar 60 feet long, 40 feet wide, and 14 feet high, with a 40-foot door opening, covered with corrugated iron, operated by them in connection with a flying school, and located on land leased by the town of Fort Sumner, N. Mex., and located 2 miles north of Fort Sumner on what later became the Fort Sumner Air Base in charge of the Air Force of the United States.

That on or about July 2, 1942, the Government of the United States took the airport, on which the flying school was located, for defense purposes, and by verbal agreement between affiants and Lt. Col. T. B. Anderson, commanding officer, affiants gave Colonel Anderson permission to use their hangar until such time as the Air Force constructed their own maintenance buildings; that pursuant to that understanding the Air Force command used said hangar for several months; that sometime in the fall of that year and without any previous notice of any kind affiant Myrtle Goedeke received a telephone call from the Air Force command directing her to remove the hangar immediately or else it would be destroyed, notwithstanding that Colonel Anderson, as commanding officer, had agreed that when their use of said hangar was finished he would have it removed for affiants.

That affiant Myrtle Goedeke immediately called one R. M. Edwards and arranged with him to move their said hangar from the Fort Sumner Air Base to their farm in the valley, but that by 2 o'clock that afternoon when said Edwards appeared at the airfield with his trucks the hangar had been destroyed and burned by the Air Force.

That since the construction of said hangar was with the understanding on the part of the village of Fort Sumner, from whom affiants leased the land, that they would own the hangar and would have the right to remove the same, and since at the time the Air Force command took it over the hangar remained on the land by request of the commanding officer as aforesaid, affiants should have been and

should be compensated for its destruction. That the approximate cost of said hangar in 1939, when it was built, including material and labor, was $1,000, although the value thereof when it was destroyed was considerably higher.

That since affiants learned of their rights to compensation they have been making diligent effort to locate Lt. Col. T. B. Anderson for the purpose of obtaining from him verification of the verbal understanding under which the Air Force took over and used the said hangar, and that it was not until the 10th day of July 1954 that they received authentic information from Washington that the said Colonel Anderson had been killed in Japan during the war.

L. S. GOEDEKE,
Mrs. MYRTLE GOEDEKE.

Subscribed and sworn to before me this 13th day of July 1954.

[SEAL] FLORENCE PEARL DEAN,
Notary Public, Chaves County, N. Mex.

My commission expires December 5, 1957.

VILLAGE OF FORT SUMNER, INC.,
Fort Sumner, N. Mex., February 17, 1954.

To Whom It May Concern:

This is to certify that I, the undersigned, M. P. Carr, a resident of Fort Sumner, N. Mex., do hereby state:

That I was mayor of the village of Fort Sumner from May 1938 to June 1946. That during the fall of 1939, I personally gave one Leonard S. Goedeke, after consulting other members of the city council, verbal permission to build and construct 1 sheet iron metal hangar, size 60 feet long, 40 feet wide, and 14 feet high on city property, located about 2 miles north of Fort Sumner, now nominally known as the Fort Sumner Air Base. Affiant further states that the said Leonard S. Goedeke conducted an airplane school and taught flying at said hangar from the latter part of 1939 to and through July 1942, at which time the Army took over the location where the hangar was constructed, the city leasing the land to the Army.

M. P. CARR.

STATE OF NEW MEXICO,
County of De Baca, ss:

Subscribed and sworn to before me this 17th day of February, 1954.

[SEAL] T. G. TUDOR, *Notary Public.*

My commission expires March 28, 1956.

VILLAGE OF FORT SUMNER, INC.,
Fort Sumner, N. Mex., February 18, 1954.

To Whom It May Concern:

This is to certify that I, R. M. Edwards, the undersigned, a resident of Fort Sumner for 45 years, do hereby state: That on the latter part of 1942, one Mrs. Leonard S. Goedeke phoned me around 9 a. m. to have one of my trucks move their airplane hangar from the Fort Sumner Air Base to their farm in the valley.

By the time I assembled my trucks and secured proper manpower, it was around 2 p. m. when we arrived at the base. During this period of time, the building had been razed, and from all appearance, part of building had been fired, and what remained was of no value to be moved. I reported this information to Mrs. Leonard S. Goedeke that afternoon.

R. M. EDWARDS.

STATE OF NEW MEXICO,
County of De Baca, ss:

Subscribed and sworn to before me this 18th day of February, 1956.

[SEAL] T. G. TUDOR, *Notary Public.*

My commission expires March 28, 1956.

FORT SUMNER AUTO CO.,
Fort Sumner, N. Mex., March 9, 1954

To Whom It May Concern:

I, Joe Pena, age 45, a resident of Fort Sumner, N. Mex., since 1920, do hereby state:

For a period of about 10 years, prior to August 15, 1942, I was employed as a Ford mechanic for the Fort Sumner Auto Co., in Fort Sumner, N. Mex.

That during the fall of 1939, I assisted one Leonard S. Goedeke in construction one sheet iron metal airplane hangar, size 60 by 41 by 14 feet, located on the land of the village of Fort Sumner. I worked in this hangar during my spare time from 1939 to July 1942, when the Army Air Force activated this land on which the said building was built. Compensation for this work was donated to Mr. Goedeke for personal flying instruction.

In August 1942, I resigned my job at the Fort Sumner Auto Co. and secured employment as civilian mechanic for the Army Air Force.

The period from about August 15 until about the last of September 1942, I worked at said hangar repairing planes and gliders for the Army Air Force, as Mr. Goedeke gave the commanding officer in charge of the field permission to use this hangar until they could construct their own maintenance buildings.

Affiant further states that he was working at this field when the Army razed the above-described building.

JOE PENA.

STATE OF NEW MEXICO,
County of De Baca, ss:

Subscribed and sworn to before me this 9th day of March 1954.

[SEAL] T. G. TUDOR, *Notary Public.*

My commission expires March 28, 1956.

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Calendar No. 478

84TH CONGRESS, 1st Session | SENATE | REPORT No. 474

SHIRLEY W. ROTHRA

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R.. 1974]

The Committee on the Judiciary, to which was referred the bill (H. R. 1974) for the relief of Shirley W. Rothra, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Shirley W. Rothra, of Mayville, N. Y., of all liability to refund to the United States the sum of $150, representing overpayments made to him by the War Department as the result of its failure to make appropriate deductions from his pay for class E allotments during the period beginning October 1, 1944, and ending December 31, 1945.

STATEMENT

Records of the Department of the Army disclose that Shirley W. Rothra was inducted into the Army of the United States as a private on March 25, 1944. On September 8, 1944, Private Rothra authorized a deduction from his pay of $10 a month as a class E allotment to his wife, to commence on October 1, 1944. Thereafter a check was mailed each month, in the amount of $10 per month for 15 months, to Mrs. Rothra. On September 11, 1944, Private Rothra was sent overseas for service in the European theater of operations, where he served until December 31, 1945. He returned to the United States and was honorably discharged from the Army as a private, first class, at Fort Dix, on January 16, 1946.

Through administrative error the allotment to Mrs. Rothra was never deducted from the soldier's pay and as a result thereof public

funds of the United States in the aggregate amount of $150 were improperly paid to Mrs. Rothra in the mistaken belief that such funds had been deducted from the pay of her husband.

The first notice that payments had been erroneously made without corresponding deductions was discovered on February 19, 1951, when the Army Finance Center sent a letter to Mr. Rothra stating that the allotments paid to his wife had never actually been deducted from his pay for the period October 1, 1944, through December 31, 1945, and demanded that Mr. Rothra refund that sum to the United States.

The Department of the Army advises the committee that it is opposed to the enactment of this legislation on the ground that this claimant had knowledge of the fact that the class E allotment his wife was receiving was not being deducted from his pay, and the Army takes the position that despite the fact that the Government failed to collect the money in the manner intended does not relieve the enlisted man of liability for the payments made to his wife.

In an affidavit executed by the claimant, and which is made a part of this report, the claimant states that he had no knowledge that the sum of $10 per month was not deducted from his pay because all during this time he was overseas he was paid only a few times in various amounts and that when he was discharged his finances were checked by the disbursing officer and he was paid the amount authorized by the disbursing officer. The claimant further points out that the first knowledge he had that there was an error in his account was 6 years after tha allotments had been made.

The committee is constrained to disagree with the report of the Department of the Army and is of the opinion that this claim should be favorably considered. The committee is of the opinion that to require a repayment of this amount at this time would impose a severe hardship on Mr. Rothra and his family. Mr. Rothra is presently supporting his wife and three children and such a requirement at this late date would impose an unfair burden on the claimant. The committee is of the further opinion that the facts in this case lead the committee to favorably consider this claim. Mr. Rothra was overseas all the time that the allotment payments were made to his wife. He was in a war theater of operations and payments to soldiers in the field were made at irregular times. The committee believes that it was entirely feasible that this man had no knowledge, because of the circumstances of wartime, that the $10 a month was not being deducted from his pay.

In view of the above, the committee, therefore, recommends favorable consideration of H. R. 1974.

Attached hereto and made a part hereof is the report of the Department of the Army submitted on an identical bill of the 82d Congress and affidavit executed by the claimant.

DEPARTMENT OF THE ARMY,
Washington, D. C., January 2, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 4789, 82d Congress, a bill for the relief of Shirley W. Rothra.

This bill provides as follows:

"That Shirley W. Rothra (Army Service Number 42109864), Mayville, New York, is hereby relieved of all liability to refund to the United States the sum of $150, representing overpayments made to him by the War Department as the result of its failure to make appropriate deductions from his pay for class E allotments during the period beginning October 1, 1944, and ending December 31, 1945. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for any amount for which liability is relieved by this Act."

The records of the Department of the Army show that Shirley W. Rothra was born on March 8, 1919, at Warren, Pa.; that he was inducted into the Army of the United States as a private on March 25, 1944, at Fort Dix, N. J.; that on September 11, 1944, he was sent overseas for service in the European theater of operations; that he left Europe for the United States on December 31, 1945; and that he was honorably discharged from the Army as a private first class at Fort Dix on January 16, 1946. Private Rothra and his wife, Mrs. Hazel M. Rothra, resided at 170 South Erie Street, Mayville, N. Y., at the time he was inducted into the Army, and they still reside at that address.

On September 8, 1944, Private Rothra authorized a deduction from his pay of $10 per month as a class E allotment to his wife, to commence on October 1, 1944. Thereafter a check in this amount was mailed each month for 15 months to Mrs. Rothra (covering the period from October 1, 1944, to December 31, 1945, inclusive). Through an administrative error this allotment was never deducted from this soldier's pay, and as a result public funds of the United States in the aggregate amount of $150 were improperly paid to Mrs. Rothra in the mistaken belief that such funds had been deducted from the pay of her husband. These erroneous payments were not discovered until after this soldier was discharged from the army.

On February 19, 1951, the Army Finance Center, Office of the Chief of Finance, St. Louis, Mo., sent a letter to Mr. Rothra in which it was stated that it had been discovered that no class E deductions were actually made from his pay for the period from October 1, 1944, through December 31, 1945, and that as a result thereof erroneous payments had been made to Mrs. Rothra in the aggregate amount of $150, and demanded that he refund that sum to the United States. Up to the present time neither Mr. Rothra nor his wife has refunded to the Government any part of such indebtedness.

Private Rothra knew the amount of pay that a soldier of his grade was entitled to receive. The records of the Department of the Army show that none of the payrolls on which he was paid while he was in the Army contained a deduction for a class E allotment. It would seem, therefore, that he had knowledge of the fact that the class E allotment his wife was receiving was not being deducted from his pay.

The decision of the Comptroller General of the United States of March 4, 1947, in the case of M. Sgt. Melton E. Ebaugh (B–61739), involved a somewhat similar situation. In that case Sergeant Ebaugh authorized the deduction from his pay of a class E allotment of $35 per month to be paid to his wife. Subsequently he discontinued the allotment. The Army made 4 monthly payments of the allotment to Mrs. Ebaugh, aggregeting $140, after such allotment had been discontinued by Sergeant Ebaugh, which payments had not been deducted from his pay. Subsequently the amount of these erroneous payments were deducted from the sergeant's pay. The question arose as to whether he was entitled to a refund of such amount. The Comptroller General held that there was no sound basis for refunding to Sergeant Ebaugh the amount of the erroneous payments of class E allotment which had been made to his wife and which had subsequently been collected by the United States from his pay. The Comptroller General in his decision said:

"It appears that Master Sergeant Ebaugh registered a class E allotment in the amount of $35 per month, effective May 1, 1942, in favor of his wife, Vera Lorene Ebaugh, and that he discontinued such allotment as of May 31, 1942, and re-

quested family allowance payments authorized by the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381).

* * * * * * *

"* * * payment of the monthly class E allotment of $35 to Sergeant Ebaugh's wife was continued for the months of June, July, August, and September but the amount of such allotment was neither deducted from his pay nor deducted from the family allowance payments subsequently made. The result was that the enlisted man's wife received a total of $140 from the Government to which she was not entitled.

* * * * * * *

"In the ultimate analysis it would appear that the situation presented is merely a case where the Government paid certain moneys to the enlisted man's wife, on his behalf, to be used for her support. The fact that the Government failed to collect the moneys in the manner intended does not relieve the enlisted man of liability in the matter.

"For the foregoing reasons I am inclined to the view that there is no sound basis for refunding to Sergeant Ebaugh the amount of the erroneous payments heretofore collected from him."

It appears that Mr. Rothra was a cabinetmaker by occupation, earning $40 per week, prior to his induction into the Army on March 25, 1944. The Department of the Army is not informed as to his present earnings. Presumably he is capable of earning wages considerably in excess of those received by him at the time he entered the military service in 1944. He has submitted no evidence showing that he is unable to refund to the United States the sum of $150 which was erroneously paid to his wife and which presumably was used by her for her support. He has been offered the privilege by the Department of the Army of repaying this sum to the United States in monthly installments of $10 per month.

In the light of the foregoing facts and of the authority herein cited there is no proper basis for the granting of the relief proposed in H. R. 4789. Furthermore, the enactment of this bill would constitute discriminatory legislation in that it would grant to this claimant special benefits that are denied to all other claimants in similar circumstances, and there appear to be no facts or circumstances present in this case which would warrant singling out this claimant for such preferential treatment. The Department of the Army, accordingly, recommends that this bill be not favorably considered by the Congress.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

AFFIDAVIT

STATE OF NEW YORK,
County of Chautauqua, Village of Mayville, ss:

Shirley W. Rothra, being duly sworn, deposes and says that he resides at Mayville, N. Y.

That his Army serial number is 42109864. That he was inducted into the Army on March 25, 1944, and on September 16, 1944, he left the continental United States for the European theater of operations where he served for over 15 months in the campaigns of the Ardennes, Central Europe, northern France, and the Rhineland, during which time he became wounded and received the Purple Heart therefor, which citation was never reported on his discharge papers.

That deponent was honorably discharged from the service on January 16, 1946.

That just prior to deponent's departure from the United States on September 16, 1944, he authorized a class E Allotment of $10 a month in favor of his wife, Hazel M. Rothra, which became effective October 1, 1944. That in February 1951 deponent received a notice from the Army Finance Center claiming a mistake had been made in 1944 and 1945 in that the sum of $10 per month for 15 months was not deducted from deponent's pay and that deponent was now indebted the sum of $150. Deponent had no knowledge that said sum of $10 per month was not deducted from his pay, as deponent, while overseas, was only paid a few times in various amounts. That when deponent was discharged his finances were checked by the disbursing officer, and deponent was paid the amount authorized by the disbursing officer.

That the first time deponent had any knowledge that the Army had committed errors was when he received said notice in 1951, which was over 6 years after the time said allotment was authorized.

That said error and mistakes were made on the part of the Army and deponent in no way knew of said error or in no way contributed to same. That as deponent was not responsible for said errors and did not know of them until 6 years after they were made, he feels that he should not be forced to refund said sum.

That the said $10 allotment was for deponent's wife and that said wife used her allotments to support herself and child, and they were entirely consumed in this manner.

That deponent is now supporting his wife, his three children, and himself on his average earnings of about $50 per week, and it would be a severe hardship on his part to refund the above sums and to continue to support his family out of said earnings.

Therefore deponent feels that he should not be forced to refund said sum which arose out of mistakes made on the part of the Army, to which deponent neither contributed nor had knowledge.

That deponent has never applied for any veterans' benefits, such as 52–20, and for his services to his country he has been presented a bill for $150.

SHIRLEY W. ROTHA.

Sworn to before me this 22d day of January 1952.

SEYMOUR W. ROLLMAN,
Notary Public.

My commission expires March 30, 1953.

Calendar No. 479

84TH CONGRESS, 1st Session } SENATE { REPORT No. 475

JUN 16 1955 LAW LIBRARY

MARY ROSE AND MRS. ALCIE ROSE SPITTLER

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2236]

The Committee on the Judiciary, to which was referred the bill (H. R. 2236) for the relief of Mary Rose and Mrs. Alcie Rose Spittler, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the proceeds of United States Government insurance issued to Donald Little Rose, deceased, Veterans' Administration claim XC–880119, to the duly authorized beneficiaries who are now living. The mother, Fannie Rose, died on July 24, 1953, so that the amount for which she was designated is to be divided equally between the widow, Mrs. Alcie Rose Spittler, of San Bernardino, Calif., and the sister, Mary Rose, who is the claimant under this legislation.

The facts relative to this claim are contained in House Report No. 130, on H. R. 2236 which is set forth in full below:

STATEMENT

This claim arises out of a matter involving the United States Government insurance policy issued to Donald Little Rose, the brother of the claimant. The insurance policy was in the sum of $10,000. It was first issued to Donald Rose, now deceased, on January 12, 1918. This policy was continued with certain changes in beneficiaries through June 1937. Payments were made religiously and timely. There has been no issued raised except as to a payment which was the last premium payment due on the term policy which would have concluded the 5-year period for which the policy had finally been issued. However, an application for renewal, together with the first premium on another 5-year term policy was already in the Veterans' Administration's hands at the time of the death of Donald Rose. It would appear to be in all equity and justice, and pur-

suant to the theory of unjust enrichment that the benefits payable under this policy are justly due and owing by the United States Government. It would certainly be hardly in keeping with the policy which has been followed by the Government in the handling of this insurance fund to deny to one who had paid in so much over a long period of time in view of the fact that the failure to make payment was to have undoubtedly been due to some oversight which would have been corrected had the deceased Rose lived long enough to have received notification of failure to receive the last premium payment due. This was not the case. Rose died a very short while after initiating application for renewal. We believe the claim is a just one. However, the bill should be amended so that the United States Government is liable to pay only to the duly authorized beneficiaries which would be in accordance with the will of the deceased.

Since the mother, who was to receive $2,000 under the latest designation of beneficiaries, had died, having died July 24, 1953, the $2,000 is to be divided equally between the veteran's widow, Mrs. Alice Rose Spittler, care of Santa Fe Freight House, San Bernardino, Calif., and his sister, Mary Rose of McAlester, Okla., thus making the widow entitled to $6,000 and the sister $4,000.

The committee, after review of the facts and the attached documents, believes that justice and equity require that this claim should be recognized even though as a matter of law the court could not have found other than it did in favor of the Government. It appears from the evidence that this policy has been kept in effect through the payment of premiums for many, many years, and that on the date of renewal the sum of $8.90 was sent to cover the first month's premium of the third 5-year renewal period. It was in arrears the last month of the second renewal period which for some reason or another, the veteran did not pay. To deprive the beneficiaries of the right to participate in the proceeds of this insurance seems to the committee to be extremely harsh and inequitable, when the failure to send in the last premium was apparently through error in light of his past actions. It is therefore recommended that the bill, H. R. 2236, be considered favorably.

VETERANS' ADMINISTRATION,
Washington 25, D. C., May 14, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CELLER: This has further reference to your request for a Veterans' Administration report on H. R. 2959, 82d Congress, a bill for the relief of Mary Rose, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mary Rose, McAlester, Oklahoma, the sum of $10,000. The payment of such sum shall be in full settlement of all claims of the said Mary Rose against the United States for payment of the proceeds of the United States Government insurance (K–662766) issued to her brother, the late Donald Little Rose (Veterans' Administration claim numbered XC–880119): *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The records indicate that Donald L. Rose (XC–880119) entered upon active duty with the United States Army on August 15, 1917, was honorably discharged on June 7, 1919, and died of cerebral hemorrhage on July 28, 1937.

The veteran applied for and was granted $10,000 yearly renewable term insurance effective January 12, 1918, which was maintained in force under premium paying conditions through June 30, 1927. Effective July 1, 1927, he applied for and was granted a conversion of this insurance to a policy of United States Government life insurance under section 301 of the World War Veterans' Act,

1924 (43 Stat. 624), as amended (38 U. S. C. 512), in the face amount of $10,000 under policy No. K–662766, issued on the 5-year convertible term plan. He designated his mother, Fannie B. Rose, as beneficiary for a $6,000 share, and his sister, Mary H. Rose, for a $4,000 share, and specified that at his death the policy proceeds were to be paid in one sum. On July 11, 1928, he executed a change of beneficiary, naming his wife, Alcie Rose, as beneficiary for a $5,000 share, his mother, Fannie B. Rose, for a $2,000 share, and his sister, Mary Helen Rose, for a $3,000 share. There is no record that the veteran took any further action relative to the beneficiary designation for the insurance.

By letter dated July 5, 1932, the Veterans' Administration informed the veteran that the act of June 24, 1932 (47 Stat. 334; 38 U. S. C. 512) amended the mentioned section 301 to provide for the renewal of term policies for a second 5-year period. The veteran was further informed that *if premiums on his 5-year convertible term policy had been paid for the 5-year period which expired on June 30, 1932*, he could, if he was not totally and permanently disabled or had not changed the policy to another form of insurance coverage, renew his 5-year convertible term policy for an additional 5 years under the 5-year level premium term plan by executing the application form enclosed for that purpose and forwarding it, together with the necessary premium remittance, to the Veterans' Administration for action. Thereafter the veteran executed an application for renewal in conformity with the letter which was approved, and the insurance was continued in force on the 5-year level premium term plan effective July 1, 1932. By letter dated September 17, 1932, the Veterans' Administration informed the veteran that unless previously exchanged for some other plan, the insurance protection under the renewed policy would cease at the expiration of the 5-year period from date of renewal. He was requested to forward future premiums as they became due or within the 31-day grace period in order to prevent lapse.

The act of June 1, 1937 (50 Stat. 241; 38 U. S. C. 512), which amended the mentioned section 301 to authorize the renewal of 5-year level premium term insurance policies for the second or third 5-year period, provides as follows:

"* * * *Provided further*, That at the expiration of any five-year period a five-year level-premium term policy may be renewed for a second or third five-year period at the premium rate for the attained age without medical examination; and in case the five-year period of any such policy shall have expired between January 24, 1937, and the expiration of five months after the date of the enactment of this amendment to this amendatory proviso and the policy has not been continued in another form of Government insurance, such policy may be renewed as of the date of its expiration on the same conditions upon payment of the back premiums within five months after such date of enactment; and the Administrator of Veterans' Affairs shall cause notice to be mailed to the holder of any such policy of the provisions of this amendment to this amendatory proviso."

Pursuant to the provisions of this enactment the Veterans' Administration, by letter dated June 5, 1937, advised the veteran of the terms and conditions under which his level premium term policy could be renewed. That letter is quoted as follows:

"Section 301 of the World War Veterans' Act, 1924, as amended June 1, 1937, provides that United States Government life insurance on the 5-year term plan may be renewed for a third 5-year period at the premium rate for the attained age of the insured.

"*If premiums on your insurance, granted under the above policy K-number, are paid for the entire second 5-year period* and your insurance is not changed to another plan of Government insurance, and if you are not totally and permanently disabled, you may renew the term insurance as of the date of expiration of the second five-year period, without medical examination.

"There is enclosed, for your convenience, an application Form 739–B which you should complete and return with a remittance sufficient to cover the premiums from the expiration of your former term policy through the month in which you make application, should you be eligible for and desire to avail yourself of this privilege. The premium rate at your attained age as of the beginning date of the third five-year period for the amount of insurance you desire to continue on the five-year-term plan, may be ascertained from the enclosed copy of rates.

"In order to provide protection under your Government insurance you are urged to give the matter your immediate attention as the completed application Form 739–B and the necessary remittance must be mailed or otherwise delivered to the Veterans' Administration, Washington, D. C. *Protection under your policy ceases at the end of the present 5-year period and cannot be resumed until proper application is made, although the application may be submitted within 5 months after the date of the enactment of this amendment.*" [Italics supplied.]

The form of application for renewal enclosed with this letter included the following matter printed on the approximate center of the form:

"It is understood and agreed that the insurance hereby applied for, if granted, will become effective on the first day of the month following the expiration of the present 5-year term period under the above identified policy, *provided the premiums on the policy are paid to the end of the current 5-year period* and I am otherwise entitled to the insurance under the World War Veterans' Act, 1924 and amendments, and the rules and regulations of the Veterans' Administration." [Italics supplied.]

In reply to the mentioned letter of June 5, 1937, the veteran executed and filed with the Veterans' Administration an application for renewal bearing the date, June 15, 1937. At the same time he remitted the amount of $8.90, representing the first month premium of the third 5-year renewal period commencing July 1, 1937. Contrary to instructions which had been given, he did not remit the premium past due for the month of June 1937, the final month of the second 5-year period expiring June 30, 1937. There is no indication that the veteran took any further action in the matter between the time of submission of his application for renewal and July 28, 1937, the date of his death. The remittance of $8.90 which he had previously tendered was refunded to the veteran's widow, Mrs. Alcie Rose by a check in that amount dated May 12, 1941.

Following the veteran's death, the three beneficiaries, Alcie Rose, Fannie B. Rose, and Mary Helen Rose, filed claims for deaths benefits under the policy. It was contended that the veteran became permanently and totally disabled prior to June 30, 1937, at a time when the policy was in force under premium paying conditions, and further that the policy was in force under premium paying conditions on the date of the veteran's death.

It was administratively determined that the veteran had not been permanently and totally disabled prior to June 30, 1937, nor had he been permanently and totally disabled at any time prior to July 27, 1937, the date on which he entered the hospital on his terminal illness. It was further determined that since premiums were paid only through May 31, 1937, the policy lapsed for failure to pay the premium due on June 1, 1937, and was not in force on the date of the veteran's death on July 28, 1937. Also that since the veteran had failed to remit all necessary premiums, the conditions precedent set forth by the Act of June 1, 1937, were not complied with and the Veterans' Administration, therefore, had no authority to authorize renewal. It was further held that the policy, as renewed for the second 5-year period commencing July 1, 1932, by its terms expired at midnight June 30, 1937, and that the Act of June 1, 1937, in no way changed the provision of the existing contract of insurance relating to the date of its expiration.

All beneficiaries were advised of the denial of their claims. No administrative appeal was taken. On June 19, 1939, Mary Helen Rose, Fannie M. Rose and Alcie Rose filed suit against the United States in the District Court of the United States in and for the Southern District of California, Central Division, alleging as the basis for the suit, the same grounds on which they had based their claims before the Veterans' Administration. The case was tried on its merits and on January 17, 1940, the court rendered judgment in favor of the United States, which concluded as follows:

"It is ordered, adjudged, and decreed, that the above-entitled cause be dismissed with prejudice; that the plaintiffs take nothing thereby and that judgment be entered for the defendant, the United States of America, without costs."

The plaintiffs took no appellate action on this judgment.

While it is true the veteran indicated his desire to renew his policy, it is apparent that the reason there was no insurance in force at the time of death was his failure to meet the conditions precedent set forth by statute, even though he was fully informed or at least was in possession of information from which an ordinarily prudent person would have been advised as to the governing requirements. It is significant that having fulfilled requirements for renewal for the second 5-year period commencing July 1, 1932, the veteran was presumably well aware of such requirements and was thus doubly informed by the information furnished to him in connection with renewal for the third 5-year period commencing July 1, 1937.

The validity of a policy of United States Government life insurance issued on the 5-year level premium term plan is contingent upon the timely payment of premiums in accordance with the terms of the policy and the meeting of minimum renewal requirements set forth by the statute authorizing renewal. The facts in the case are that the insurance lapsed for nonpayment of premium due June 1, 1937, was not renewed because of failure to meet statutory renewal requirements, and was not in force on the date of the veteran's death, July 28, 1937.

The effect of the bill would be to pay a gratuity of $10,000 to Mary Rose predicated on a lapsed policy of insurance with respect to which both the executive and judicial branches of the Government have determined that there is no liability, and under which Miss Rose was designated as one of three beneficiaries and for only a $3,000 share. The Veterans' Administration is not aware of any justification for payment of such a gratuity.

The enactment of the proposed legislation would be discriminatory in that it would single out the individual case of Mary Rose for special legislative treatment to the exclusion of other cases which must be denied where similar circumstances exist. Further, enactment of the bill might be a precedent for requests for like treatment of similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

O. W. CLARK,
Deputy Administrator
(For and in the absence of the Administrator).

AFFIDAVIT OF MARY H. ROSE

STATE OF OKLAHOMA,
Pittsburg County, ss:

Mary H. Rose, being first duly sworn upon oath says that she is a resident of McAlester, Okla., residing at 615 South Second Street, in the above named city and State.

Your affiant would further state that she is the sister of Donald Little Rose, identical with Donald L. Rose, who held veteran insurance under policy K–662766, which was converted to a 5-year convertible term policy, and became effective on or about July 1, 1927; that an attempt was made by the said Donald Little Rose, Identical with Donald L. Rose, for a renewal of a third 5-year period at a premium rate of $8.90.

Your affiant would further state that on June 15, 1937, there was remitted the sum of $8.90 and that inadvertently, by reason of misinformation, he failed to remit, as claimed by the Veterans' Administration, the sum of $7.90 to cover the 60th month of his current policy; that confusion arose by reason of such misinformation; that Donald Little Rose, identical with Donald L. Rose, was a veteran of World War I, and was affected with a nervous condition and before his death had hypertension; that this affiant for many years had transmitted premium payments for her brother, but that the transmittal above referred to was made by his wife, Alcie Rose.

Your affiant would further state that the beneficiaries under the policy of Donald Little Rose, identical with Donald L. Rose, were as follows: Fannie B. Rose, his mother; Mary H. Rose, his sister, and Alcie Rose, widow of the deceased veteran, who subsequently married Malcolm Spitler, whose address is General Delivery, San Bernardino, Calif.; that the address of the affiant is as above stated and that Fannie B. Rose, mother of the deceased World War veteran departed this life on July 24, 1943; that affiant will submit certificate of death or furnish such other information as may be required.

Your affiant would further state that Donald Little Rose, identical with Donald L. Rose, departed this life on July 28, 1937, within less than 30 days from the date the Veterans' Administration contends that the policy had expired.

Affiant would further state that Donald Little Rose, identical with Donald L. Rose, visited the home of this affiant in the early part of July 1937, and that he was under the impression and belief that he had proceeded under Public Law 127, 75th Congress, and had renewed his policy for a third 5-year period.

Affiant would further state that it was always the intention that in case of the death of her deceased brother, that she, her mother would receive that part of the proceeds of his policy as they would be entitled to and that even though a technicality has arisen, that her deceased brother proceeded in good faith in order to keep the policy in force; that affiant is not a young woman and is in need of the proceeds of the policy, which she thinks she is justly entitled to, in order to maintain her in her declining years; that as a moral right, taking into consideration the service of her deceased brother in World War I, and affiant being punctual

in paying premiums on said policy for her brother, that she should be paid and is entitled to a most favorable consideration.

Further affiant saith not.

MARY H. ROSE.

Subscribed and sworn to before me this 31st day of July 1951.

[SEAL] RHENIA ROBERTS,
Notary Public.

My commission expires September 11, 1952.

AFFIDAVIT OF R. S. NAYLOR

STATE OF OKLAHOMA,
Pittsburg County, ss:

R. S. Naylor, being first duly sworn upon oath says: That he is a resident of McAlester, Pittsburg County, Okla., and knew during her lifetime, Fannie B. Rose, mother of Donald L. Rose, deceased, and his sister, Mary H. Rose; that he first became acquainted with them in 1910.

Affiant further states that he was in World War I and that Donald L. Rose was also in World War I and that he observed him after he returned from the service; that he had a nervous condition and that a few years prior to the making of this affidavit, the said Donald L. Rose had high blood pressure.

Affiant further states that the premiums upon the policy in question were promptly paid prior to and after the conversion of the policy; that according to his belief, Mary H. Rose made payment of all premiums except the last two premiums under the converted policy; that he believes that on account of the nervous condition and high blood pressure, that Donald L. Rose, deceased, believed that he had complied with all the requirements under the policy.

Affiant further states that Donald L. Rose was in McAlester, Okla., several weeks before his death and that affiant, being in the insurance business, talked with the said Donald L. Rose regarding his policy, and affiant was advised by him that the premiums had been paid and that the policy, issued by virtue of his having been in World War I, and later on converted, was in force.

Your affiant would further say that the premiums have meticulously been paid over a period of years, all being in good faith that the premiums had been paid, and affiant is of the opinion that, as a moral right, the proceeds under the policy should be paid, as the amount of payments and the discrepancy thereof were small in amount and of few days in date as to the elapsation.

Your affiant would further state that the mother of the decedent, Fannie B. Rose, died on or about July 24, 1943, and that Mary H. Rose, sister of the decedent is not a young woman and that she is in need of this money to assist her in her older years.

Further, affiant saith not.

R. S. NAYLOR.

Subscribed and sworn to before me this 31st day of July, 1951.

[SEAL] RHENIA ROBERTS,
Notary Public.

My commission expires September 11, 1952.

Calendar No. 480

84TH CONGRESS
1st Session

SENATE

REPORT
No. 476

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

HAROLD C. NELSON AND DEWEY L. YOUNG

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 903]

The Committee on the Judiciary, to which was referred the bill (H. R. 903) for the relief of Harold C. Nelson and Dewey L. Young, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 2, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the sum of $77.28 to Harold C. Nelson, of Fairbanks, Alaska, and to pay the sum of $84.90 to Dewey L. Young, of Fairbanks, Alaska, in full settlement of all their claims against the United States as reimbursement for handtools destroyed as a result of a fire which occurred December 22, 1953, at the Alaska Road Commission's Gardiner Creek construction camp, Alaska.

STATEMENT

Records of the Department of the Interior disclose that the Gardiner Creek construction camp is located on the Alaska Highway about 30 miles west of the boundary between Alaska and the Yukon Territory. At the time of the fire the Alaska Highway Commission employed claimant Nelson as a grader operator and claimant Young as a foreman. The tools of both claimants were stored with equipment of the Commission in a frame garage at the camp.

The garage was discovered to be on fire around 5:30 p. m., on December 22, 1953, and without delay, available firefighting equipment and hand extinguishers were used in an attempt to put out the fire. The building and all contents were destroyed.

The Interior Department reports that the cause of the fire is unknown. A possible cause assigned was defective wiring near the fuse or switchbox in the destroyed building, and if such were the cause, negligence may have been present. That Department states, however, that there is no evidence of negligence or wrongful act or omission on the part of anyone, including the claimants.

Claims for their loss were submitted to the Department of the Interior by the claimants and the Department determined that inasmuch as the loss was not caused by the negligence or wrongful act or omission of any employee of the Department of the Interior, the claims could not be paid under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672) permitting administrative adjustment of the claims.

The Department of the Interior recommends favorable consideration of this legislation on the ground that fire of undetermined origin destroyed the handtools of each of the claimants, which were furnished and used by them, respectively, in connection with their work, and at the time of their destruction were stored in the Commission's building where they should have been.

The committee is in agreement with the recommendation of the Department of the Interior that this bill be considered favorably. Accordingly, the committee recommends favorable consideration of H. R. 903, as amended.

Attached hereto and made a part hereof is the report submitted by the Department of the Interior on identical legislation of the 83d Congress and other evidentiary data relating to these claims.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 15, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. REED: Your letter of May 10 requests a report of the facts disclosed by our files as to H. R. 8994, a bill for relief of Harold C. Nelson and Dewey L. Young, together with our opinion as to the merits of the bill.

I recommend that H. R. 8994 be enacted in lieu of H. R. 8809. We have reported to you on H. R. 8809, for the relief of Harold C. Nelson, whose claim is included in H. R. 8994.

The bill would authorize payment of the sum of $77.28 to Harold C. Nelson and of the sum of $84.90 to Dewey L. Young, as reimbursement for handtools destroyed in a fire at the Gardiner Creek construction camp of the Alaska Road Commission. The camp is understood to be on the Alaska Highway about 30 miles west of the boundary between Alaska and the Yukon Territory. At the time, the Commission employed Mr. Nelson as a grader operator and Mr. Young as a foreman. The tools of both claimants were stored with equipment of the Commission in a frame garage at the camp.

The garage, according to representations made to us, was discovered to be on fire around 5:30 p. m., on December 22, 1953, and without delay, available fire-fighting equipment consisting of two 15-pound CO_2 extinguishers and two hand extinguishers were used. The building and contents were destroyed.

The cause of the fire is unknown. A possible cause assigned is defective wiring near the fuse or switch box in the destroyed building, and if such were the cause, negligence may have been present. However, no negligence or wrongful act or omission on the part of anyone including the claimants is known, and I am informed that the Commission has carefully investigated the matter.

Claims for the loss were submitted to the Solicitor of this Department. The claim of Mr. Nelson was submitted the latter part of March of this year, and an administrative determination was made under date of March 31, 1954, to the effect that as the loss was not caused by the negligent or wrongful act or omission

of any employee of this Department, the claim could not be paid under the provision of the Federal Tort Claims Act (28 U. S. C. 2672) permitting administrative adjustment of the claims. Mr. Young's claim was submitted the latter part of April, and under date of May 20, a like determination was made.

The claims appear to be ones for equitable relief. Fire of undetermined origin destroyed the handtools of each of the claimants, which were furnished and used by them, respectively, in connection with their work, and at the time of their destruction, were stored in the Commission's building where they should have been.

Copies of each of the lists of articles making up the respective claims and signed by the respective claimants are enclosed. Depreciation of approximately 25 percent is deducted by Mr. Nelson from the original values he claims, and approximately 21 percent by Mr. Young. Copies of the statements as to the fire made by each of the claimants and another employee of the Commission, Neil W. Welliver, are also enclosed

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

D. Otis Beasley,
Administrative Assistant Secretary of the Interior.

Tools lost by Dewey L. Young, December 22, 1953, in fire at Alaska Road Commission Gardiner Creek camp:

Items destroyed	Years old	Condition	Value at time of loss	Original cost
1 set open end, 6 wrenches	2	Good	$5.75	$8.75
1 set box end, 6 wrenches	2	do	4.00	5.00
1 set Allen, 3/32 to 1/16 inches	1	do	3.00	4.00
1 set socket, 1/2-inch drive, 13	1	do	10.00	12.00
1 set ratchet, 1/2-inch drive	1	do	3.50	4.50
1 piece 1/2-inch universal joints	2	do	1.00	1.50
1 set tubing cutter, vise and flanger	1	do	5.00	8.00
1 set taps, 6-inch 5/8- to 1/2-inch taps, pipe	3	do	3.00	4.00
1 set screw-extractor from 3/8 to 1/4 inch	2	do	2.00	3.00
1 set taper style S. A. C. 1/2- to 1/2-inch taps	3	do	3.50	4.50
1 valve grinder, back and forth movement	2	do	2.75	3.75
1 1/4 drive speed-wrench 1/2	4	do	1.75	2.00
2 Stillison wrenches, 1 to 14 inches and 1 to 8 inches	2	do	3.40	4.40
2 crescents 6-inch wrenches	2	do	2.50	3.00
2 spark plug screwdrivers	1	do	1.75	2.00
2 recessed-head screwdrivers	2	do	1.00	1.50
1 pair needle-nose pliers	1	do	2.00	2.25
1 pair linemen's pliers	4	do	2.00	2.35
1 diagonal-cutting pliers	1	do	2.00	2.50
2 1/2 extension 4 and 6 inches	2	do	2.00	2.50
1 flex-handle, 15	2	do	2.50	3.00
1 ratchet 1/4 8-inch drive	1	do	2.00	2.50
1 4-piece pin punch	1	do	1.50	2.00
1 4-piece chisel 1/4 to 1/2 inch	1	do	1.50	2.00
1 breast drill	3	do	5.50	6.50
1 bit-brace, carpenter	4	do	3.50	4.50
6 wood augers, 1/2 to 3/4 inch	4	do	2.50	3.00
1 overhead valve lifter	5	do	2.00	2.50
1 set, 7-piece carboy steel drills, 1/16 to 1/4 inch	1	do	2.00	2.50
Total			84.90	108.00

I hereby certify that to the best of my knowledge the above listings are true and correct.

Dewey L. Young.

The following list was prepared by Harold C. Nelson of his personal handtools which were destroyed by fire at Gardiner Creek camp on December 22, 1953:

Article	Years old	Condition	Original value	Value time of fire
1 metal tool box	2	Good		
1 ½-inch drive socket set	2	do		
1 ⅜-inch drive socket set	2	do	$55.00	$41.25
1 ¼-inch drive socket set	2	do		
1 6-piece combination wrench set	2	do	4.50	3.38
1 6-piece box end wrench set	2	do	5.25	3.93
1 9-piece open end wrench set	2	do	6.25	4.69
1 9-piece ignition wrench set	½	New	3.00	2.25
1 6-inch adjustable wrench	2	do	1.50	1.13
1 9-inch vise grip	2	Good	2.50	1.88
1 6-inch diagonal pliers	2	do	2.00	1.50
1 6-inch long nose pliers	2	do	2.00	1.50
1 hacksaw	2	do	3.00	2.25
1 ball pein hammer	2	do	1.50	1.13
1 6-inch screwdriver	2	do	.50	.38
1 8-inch screwdriver	2	do	.75	.56
1 stubby screwdriver	2	do	.50	.38
1 4-piece Phillips screwdriver set	2	do	3.00	2.25
3 screw starters	1	do	2.50	1.88
1 compression gage		New	7.00	5.25
1 spark plug gap gage		do	.75	.56
1 feeler gage	2	Good	1.50	1.13
Total			103.00	77.28

I hereby certify that to the best of my knowledge the above listings are true and correct.

HAROLD C. NELSON.

GARDINER CREEK GARAGE FIRE—WITNESS STATEMENT (DECEMBER 22, 1953)

It had been my day off so I was lying down relaxing when about 5:15 or 5:30 p. m. the lights went out. Thinking someone had plugged in some appliance and overloaded the plant tripping the overload switch, I was in no hurry to investigate—this happens quite often with the small plant that we have. A few minutes later someone hollered "Fire" so I ran out picking up a small fire extinguisher, but by the time we reached the garage the doors were outlined in flames. We opened the doors and Neil Welliver tried to get the Oshkosh started, but it was already burning and too hot to stay with very long so we had to get out. As we had no other fire-fighting equipment, all we could do was try to keep the fire from spreading to the other buildings.

HAROLD C. NELSON, *Grader Operator.*

GARDINER CREEK GARAGE FIRE—WITNESS STATEMENT (DECEMBER 22, 1953)

I had completed pumping water from the tank truck to the cookhouse and put the tanker away in warm storage at 5 p. m. I walked by the garage to see if it were locked, but did not look in. I didn't see anything wrong or notice any smoke. At approximately 5:30 p. m., the lights flickered and went out. I started for the light plant and discovered the garage afire. Harold Nelson arrived at the same time as myself and between us we managed to open one set of doors. The whole interior seemed to be blazing, but most intense around the doors. Harold Nelson used a 15-pound CO_2 extinguisher to subdue the flames enough to enable me to reach the driver's seat of the Oshkosh truck. The motor wouldn't catch and I had to abandon because of the heat. Mr. Young, Mr. Nelson, and myself used up two 1-quart carbon tetrachloride extinguishers and the remainder of the CO_2 in another attempt to reach the truck, but the heat drove us back. Further action was halted when a barrel of stove oil ignited.

NEIL W. WELLIVER, *Truck driver.*

GARDINER CREEK GARAGE FIRE—WITNESS STATEMENT (DECEMBER 22, 1953)

I had checked the garage and its stove a few minutes before quitting time and things were normal. About 5:15 p. m. or 5:25 p. m., I was sitting at the desk making out work reports. The lights went off and I thought the line was overloaded as it has so often done, but looking up from the desk I saw the orange light of the fire reflecting on the snow. We ran to the back door and saw the garage on fire. I grabbed a fire extinguisher from the messhall wall, but it was beyond fighting with a fire extinguisher.

Harold Nelson, Neil Welliver, and myself stood by far into the night to keep any sparks from flying on the nearby buildings. The boys made an attempt to save the Oshkosh, but it was already on fire so they had to abandon it.

DEWEY L. YOUNG, *Foreman, G–2.*

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Calendar No. 481

84TH CONGRESS, 1st Session | SENATE | REPORT No. 477

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MRS. LORENZA O'MALLEY (DE AMUSATEGUI), JOSE MARIA DE AMUSATEGUI O'MALLEY AND THE LEGAL GUARDIAN OF RAMON DE AMUSATEGUI O'MALLEY

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1003]

The Committee on the Judiciary, to which was referred the bill (H. R. 1003) for the relief of Mrs. Lorenza O'Malley (de Amusategui), Jose Maria de Amusategui O'Malley and the legal guardian of Ramon de Amusategui O'Malley, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 5 and 6, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay Mrs. Lorenza O'Malley (de Amusategui) the sum of $20,000, to Jose Maria Gerardo de Amusategui O'Malley the sum of $5,000, and to the legal guardian of Ramon de Amusategui O'Malley the sum of $5,000. Payment of such sums shall be in full settlement of all claims against the United States for money and supplies furnished and distributed by Mrs. O'Malley and her former husband, Ramon de Amusategui (now deceased) to American prisoners of war during World War II.

STATEMENT

This proposed legislation is identical in purpose to H. R. 6978, 83d Congress, 2d session, which passed the House, August 4, 1954.

The available data which form the basis for these claims is fully set forth in certain correspondence and other written evidence per-

taining to the aforesaid H. R. 6978, 83d Congress, 2d session, which, by reason thereof is attached to, and made a part of this report. The facts therein contained may be summarized as follows:

This claimant, Mrs. Lorenza O'Malley (de Amusategui) and her former husband, Ramon de Amusategui (now deceased) were wealthy residents of the Philippine Islands.

Beginning in 1942, after the Japanese occupation of the Philippines, the claimant and her husband joined with a number of other Philippine residents in smuggling large sums of money and substantial quantities of medicine, food and clothing to Americans who were taken prisoner by the Japanese. To effect their purpose in this undertaking, the claimant and her husband sold their jewels, clothing, and household effects to raise money, as did a number of other Philippine residents who were engaged in this venture.

The claimant's husband was arrested by the Japanese, condemned to be beheaded, but died from wounds inflicted by torture before he could be executed. Claimant likewise was captured, but escaped.

Two individuals who joined the claimant and her husband in these ventures in giving aid to American prisoners, Miss Mering Bichera, and Miss Margaret Utinsky, already have been reimbursed.

By Private Law 529, 82d Congress (66 Stat. A 40), Congress appropriated $25,000 to reimburse Miss Mering Bichera.

By Private Law 781, 79th Congress (60 Stat. 1276), Congress appropriated $9,820 to Miss Margaret Utinsky for money, goods, and supplies furnished to the Armed Forces of the United States in the Philippines.

The Department of the Army has carefully investigated this claim. It has had the jewelry, antiques, furniture, and other property which claimant and her deceased husband sold to raise funds, appraised by two independent appraisers based upon descriptions submitted by the claimant without mention of the values claimed. One of these appraisers was an independent appraiser, whose appraisal was submitted by the Bureau of Customs. The second appraisal was submitted by the United States National Museum of the Smithsonian Institution.

On the basis of these two appraisals the Department of the Army takes the view that an award of $30,000 would constitute a fair and equitable settlement, apportioned as in this proposed legislation, namely $20,000 to Mrs. O'Malley, and $5,000 to her daughter, and $5,000 to the legal guardian of her minor son. Accordingly the Department of the Army has no objection to the enactment of this bill. The Bureau of the Budget likewise advised that it had no objection to the submission by the Department of the Army of its report on identical legislation in the 83d Congress, 2d session; namely, H. R. 6978. In view of these facts, the committee accordingly recommends favorable consideration of H. R. 1003, as amended.

The data relating to the bill H. R. 6978, 83d Congress, 2d session, of identical purpose to this legislation, heretofore made a part of this report, is attached and immediately follows:

DEPARTMENT OF THE ARMY,
Washington 25, D. C., June 24, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 6978, 83d Congress, a bill for the relief of Mrs. Lorenza O'Malley (de Amusategui), and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any amount in the Treasury not otherwise appropriated, the sum of $33,395 to Mrs. Lorenza O'Malley (de Amusategui) of Fort George G. Meade, Maryland, in full settlement of all claims against the United States for money and supplies furnished and distributed by her to American prisoners of war in the Philippines during World War II."

The claimant, Lorenza V. O'Malley, was born in San Isidro, Neuva Ecija, Luzon, Philippine Islands, on April 7, 1916, of Spanish parentage. She acquired Spanish citizenship by birth, and remained a Spanish citizen until June 13, 1949. On March 19, 1933, she married Ramon de Amusategui, a native of Lequeitio, Vizcaya, Spain. It appears that the claimant's father, Dr. Gerardo Vazques, was a well-to-do physician and surgeon in the Philippines, and that claimant and her husband were considered to be very wealthy by their friends. There were two children of the marriage, Jose Maria Gerardo, born November 19, 1933, and Ramon, born February 2, 1941. At the time of the Japanese attack on the United States on December 7, 1941, her husband was the vice manager of the Ahorro Insular, a building and loan association in Manila. After the Japanese occupation of the Philippines, and beginning in January 1942, the claimant and her husband instituted a prolonged course of action to aid many Americans who were taken prisoners by the Japanese. They managed to smuggle to these prisoners large sums of money and substantial quantities of medicines, food, and clothing.

In this work, the claimant and her husband were, at times, associated with Miss Mering Bichera, for whom the Congress appropriated the sum of $25,000 "in full settlement of all claims against the United States for money and supplies furnished and distributed by her to American prisoners of war in the Philippines during World War II" (Private Law 529, 82d Cong.; 66 Stat. A40). Their primary efforts, however, were as members of the "Miss U" group. This group consisted of several persons who apparently devoted a great deal of their time and energy, at great risk of life, to aid the prisoners. It appears that Mr. de Amusategui became the moving force behind this group, although it was nominally headed by Margaret Utinsky, for whom the Congress appropriated the sum of $9,820 "in full settlement of all claims against the United States for moneys, goods, and supplies furnished and delivered * * * to the armed forces of the United States in the Philippine Islands between December 7, 1941, and August 14, 1945" (Private Law 781, 79th Cong.; 60 Stat. 1276).

As a result of his activities on behalf of American prisoners, Mr. de Amusategui was arrested by the Japanese military police on May 23, 1944. He was tried by the Japanese, convicted, and condemned to be beheaded on October 15, 1944. However, as the result of the tortures inflicted upon his body by the Japanese, he died during the night of October 14, 1944, at Bilibid Prison. It appears that, although literally tortured to death, he did not implicate the persons with whom he had worked. Shortly after her husband's arrest, the claimant refrained from further underground activities. She was arrested by the Japanese on the night of January 5, 1945, but, by feigning insanity, she was released some 24 hours later.

Lt. Col. Edward C. Mack, United States Army, a prisoner held by the Japanese at the Cabanatuan Prison Camp, was the principal agent within this camp for the receipt of underground aid. Colonel Mack died from starvation and lack of medical care in Moji, Japan, on April 9, 1945. In a letter, dated May 19, 1947, his wife, Nancy H. Mack, stated, in part, as follows:

"Then there is Mrs. Larry de Amusatique [sic] whose husband, Mr. Ramon de Amusatique, a Spaniard in Manila, was a prime mover behind the group. She was known as Amiga or Screwball and her husband as Sparkie or Sparkplug. They handled the money end of the group. Besides getting it from other sources, they gave their all from their personal funds, sold their jewels, clothes, and household effects to substantiate the fund. When the underground group met disaster in May 1944, Ramon de Amusatique was arrested and taken to Fort Santiago where he suffered tortures beyond belief. He assumed full responsibility for the underground and insisted no one else be arrested or punished. He died the night before his scheduled execution on October 14, 1944. Larry, also, was arrested and cruelly mistreated by the Japanese. My husband's dealings with them is another glorious chapter. Larry has sent me the letters Colonel Mack wrote them that escaped destruction which show how devoted they were to one another and what plans they had when the war would end in the way of rounding up the collaborators and unfaithfuls."

Col. Harold K. Johnson, United States Army (then a lieutenant colonel), who also was held prisoner by the Japanese at the Cabanatuan Prison Camp, acted

as a purchasing agent or commissary officer for the prisoners in the camp. In a statement, dated August 8, 1946, Colonel Johnson stated, in pertinent part, as follows:

"* * * During the period that I acted as purchasing officer the camp expended just a little more than a million pesos in excess of the amount authorized and paid by the Japanese. While not all of this money came in through the underground a considerable portion of it did. A minimum of 100,000 pesos came in through the commissary, all in Japanese occupation notes. More came in through other channels from the same source. Foodstuffs in bulk, medicines, particularly sorely needed amoebicides, fruits, clamensi sirup used in combating scurvy, shoes, and a limited amount of clothing were delivered. Some of the money sent in were outright donations used to purchase food for the indigent sick, some of the money in return for personal checks sent out to be cashed. There is little doubt that in some instances the rate of exchange was not favorable, but whether or not this particular group to which Mr. Amusatique [sic] represented was guilty of profiteering, I am not able to say. I firmly believe that they did not, and quote the one transaction that I had with him to substantiate this belief. It was believed that an arrangement could be worked out to augment the rations for the entire camp by delivering additional carabao, our source of meat, to the Japanese supply department. They provided little meat with the excuse that it was too expensive. One of the merchants with whom we dealt agreed to buy cattle in the Cagayan Valley, deliver them to the Japanese at their buying price and we would pay the difference between the vendor's cost and the Japanese payments. As a test on the financial transactions involved, 4 officers within the camp signed a note in the amount of $1,250 and sent to Ramon to be converted to money that we could use. He secured an exchange of 7 to 1 and delivered 8,750 pesos to our agent which was expended on fruits, vegetables and other comestibles for the entire camp. * * *

"The medicines and foodstuffs provided through the underground were invaluable in saving the lives of many American prisoners. The ration was always inadequate as provided by the Japanese, and very little medicines were furnished particularly in the early stages of imprisonment. Not enough can be said for the morale effect on the camp as a whole when this aid came through, in dribbles, to be sure, but after being cut off from all outside contact for over 6 months to know that the prisoners were not entirely forgotten bolstered morale immeasurably and had a very noticeable effect in the reduction of the death rate. During later months, while the activity had to be kept secret, the news digest [prepared by Mr. Amusatique from short wave broadcasts] circulated throughout the camp under the guise of rumors and bolstered morale in that field.

"I have no knowledge of the source of the money provided by Mr. Amusatique. It is presumed that wealthier citizens in and around Manila donated some and that many of the checks were cashed by the same people and others by Chinese merchants. Mr. Amusatique contributed liberally of his own funds, to the extent that his contributions and the devastating fire in the area in which his residence was located leaves his wife and children destitute. Whether or not the rate of exchange was fair or not is not for me to determine, but the money involved saved lives in many instances, and certainly made life more bearable in every instance.

"* * * Ramon Amusatique made the majority of contacts in Manila and had entire charge of the group after Mrs. Utinsky's departure. I have no knowledge of the part played by Mrs. Amusatique other than the story she has told me, and which I believe to be true, but if she is not deserving of assistance for her own efforts, certainly she should be rewarded for the part played by her husband and his willing sacrifice of his own life for his adopted cause."

Lt. Col. Earl R. Short, United States Army, was imprisoned in the Cabanatuan Prison Camp from June 1942 until February 1944. In an affidavit, dated August 13, 1953, Colonel Short stated, in pertinent part, as follows:

"In the fall of 1942 underground operators were able to establish communications between Manila and Cambanatuan. These contacts improved steadily until, after a few months, large quantities of money, food, and medicine, were coming into the camp both to individuals and the American camp headquarters.

"Soon after the establishment of communications, it became common knowledge in the camp that Mr. and Mrs. Ramon Amasatguie [sic] were among the most actively engaged in supplying these items.

"A Colonel Mack, who was on the camp end of the underground, told me that Ramon Amasatguie was certainly sticking his neck out for the Americans.

"I have no idea what the cash outlay of the Amasatguie's was, but it must have run into thousands and thousands of dollars.

"The assistance rendered to a large group of desperate Americans by this loyal couple undoubtedly saved many lives and was performed at great personal risk.

"Before I was sent to Japan in March 1944, we had reliable information in camp that Raymon Amasatguie was being tortured by the Japanese in the dungeons of Fort Santiago, Manila, and later that he had died there. This was confirmed to me by Mrs. Amasatguie in September 1945, when I returned to Manila.

"When contacted regarding this affidavit, I was astonished that the United States Government had not long ago made a settlement with Mrs. Amasatguie."

On April 5, 1947, the claimant married Maj. Edward A. O'Malley, United States Army. Major O'Malley adopted the children, Jose and Ramon, in July 1948, in the court of first instance of Rizall, Quezon City, Philippines. On June 13, 1949, the claimant became a naturalized citizen of the United States.

The claimant, in an affidavit executed on December 18, 1953, states that she and her husband had used their own funds to cash personal checks and promissory notes of prisoners in an amount in excess of $8,000, and that these checks and notes were destroyed by the claimant's brother-in-law after their arrest by the Japanese. She further states that her husband had made very generous contributions to the prisoners from the commissions and salary earned by him. She sets forth an itemized list of the property which she and her husband sold in order to obtain money to aid the prisoners, together with the sale value or the value they placed on each item. A majority of the items listed is jewelry, and an attempt has been made by this Department to determine the value of these items. It is realized that it is extremely difficult to accurately appraise jewelry on the basis of a written description; however, with this difficulty in mind, two appraisals were obtained and the results are submitted herein for whatever value they might have. The appraisals were based upon the descriptions submitted by the claimant without mention of the values claimed. Appraisal No. 1 was prepared by the appraiser of merchandise, New York, N. Y., and submitted by the Bureau of Customs, Treasury Department. Appraisal No. 2 was prepared and submitted by the United States National Museum of the Smithsonian Institution. They are as follows:

Item	Claimed value	Appraisal No. 1	Appraisal No. 2
1. Ring, gold-band, with 3 diamonds (1 of 1 carat; 2 each of ½ carat)	$2,400	$650	$1,250
2. Ring, platinum, with 2-carat, emerald-cut diamond	4,000	1,200	1,250
3. Ring, platinum, with rosette of 9 diamonds	1,750	150	1,000
4. Ring, gold-band, with 3 diamonds (diamonds smaller than above)	1,500	75	600
5. Pendant, large sapphire, surrounded by diamonds	2,000	400	1,300
6. Bracelet, platinum, with 27 diamonds	4,500	500	4,800
7. 4 jeweled wrist watches, ladies'	500	200	400
8. Ring, wide gold band, antique, with large amethyst	100	150	250
9. Bracelet, wide gold band with cameos	75	100	100
10. 2 Swiss watches, men's	250	100	100
11. Ring, gold, with large ruby	650	[1] 75	500
12. Ring, gold-band, with sapphire surrounded by diamonds	500	175	1,500
13. Ring, gold-band, with 3 diamonds (matching first item above)	2,600	[2] 165	1,250
14. Ring, gold, with large alexandrite	1,500	[1] 75	50
15. Ring, gold, with amethyst	150	150	100
16. Platinum cuff links, diamond set	200	175	50
17. Gold tiepin with diamond and ruby teardrop	150	75	50
18. Gold tiepin with diamond and pearl	100	50	100
19. Platinum tie clasp with diamond-set cloverleaf	250	65	50

[1] Stone assumed to be synthetic.
[2] Appraiser made erroneous assumption that this item matched item No. 8.

Other items of property, and their claimed value, are as follows:	*Claimed value*
20. 1939 Chrysler limousine	$2,000
21. Miscellaneous clothing and shoes	1,000
22. 4 camphor chests, carved	160
23. Singer sewing machine	50
24. Electric range	250
25. 2 large cribs, mahogany	60
26. 2 Chinese tables with elaborate brass tops	50
27. 4 nesting Chinese tables, mother-of-pearl inlaid	75
28. Phonograph records, collection	1,500
29. Typewriter	75
30. Proceeds from sale of family house	5,000

In an affidavit dated July 20, 1953, and a supplemental affidavit dated March 17, 1954, Jose Maria de Amusategui, brother of claimant's former husband, sets forth the approximate selling price of many of the above items. They are as follows: Item 1, $1,500; item 2, around $4,000; item 3, about $1,500; item 4, about $1,200; item 6, $3,500; item 7, $1,550; item 8, $100; item 11, $600; item 12, around $550; item 13, more than $2,000; item 14, $1,000; item 15, around $130; item 20, $2,000; items 22, 23, 24, and "other miscellaneous furniture," $3,000; item 28, $1,500; and item 30, $5,000. The total sales price of the items testified to by Mr. de Amusategui amounts to the sum of $29,130. He also stated that the jewels owned by the claimant and her husband "were valued at over $35,000 before World War II."

The amount of the proceeds received by the claimant from the sale of her father's house (item 30), and its use for the benefit of prisoners, are testified to in the statements of Marcelina V. Short (sister of the claimant) dated October 30, 1953, and February 2, 1954, and the statements of Mrs. Bertha L. Schmitt dated July 3, 1953, and January 28, 1954.

Jose Maria de Amusategui, in his affidavit dated July 20, 1953, stated—

"That to the best of my knowledge and belief, Ramon and Lorenza had personally and out of their own pockets rendered financial help to the American prisoners of war to the amount of at least 60,000 pesos or 30,000 American dollars;"

Mr. Pacita de los Reyes, who was associated with the claimant's husband in the operation of the Ahorro Insular, stated in an affidavit dated June 27, 1953, in part, as follows:

"That Ramon de Amusategui and his wife Lorenza O'Malley had sold almost all of their jewels during the war to the value of about $20,000, the major part of the proceeds of which they had spent in helping the American prisoners of war.

"That Ramon de Amusategui in view of his extensive business connection was able to get thousands of pesos as commissions by acting as agent in real-estate deals and almost all of these commissions he also used to help the American prisoners of war.

"That I actually know of at least 3 specific cases where he had acted as a real-estate agent in the sale of 3 real estate houses where he was able to get a commission of about 15,000 pesos."

Dr. Romeo Y. Atienza, who was associated with the claimant and her husband in the "Miss U" group, in an affidavit dated June 20, 1953, stated, in part, as follows:

"That aside from their underground activities, and during the whole period from 1942 to 1944, the said spouses Ramon Amusategui (now deceased) and Lorenza Vazquez (now remarried) has also given and contributed out of their own personal funds a considerable amount of money, foodstuffs, clothings, medicine, and other personal necessities to the American prisoners of war confined or concentrated in the different concentration camps, to wit: Capas, Tarlac; Cabanatuan, Nueva Ecija; Santo Tomas University, Manila; Park Avenue, Pasay City; Port Area, Manila; and Bilibid Prison, Manila.

"That I personally know that the aforementioned spouses were one of the wealthy families residing in the district of Malate, Manila, before the Japanese occupation; * * *"

Mr. Cipriano Soler, who was associated with the claimant's husband in the Ahorro Insular, in an affidavit dated July 1, 1953, stated, in part, as follows:

"We [Mr. Soler and Mr. de Amusategui] worked together in buy and sell of real estate and as stated above he delivered almost all the money he used to make to help the American prisoners and internees. His sources of income, aside from real-estate profits, were the sale of his personal properties such as his car and a big pile of phonograph records which I helped him sell; also on one occasion I helped him sell some jewelry belonging to his wife;

"* * * I do not hesitate to take an oath and say that Ramon de Amusategui was one of those who helped most the Americans. From my intimate knowledge of his work, I am ready to state that he spent from one hundred to one hundred fifty thousand pesos in Japanese military notes between 1942 to May 1944 when he was arrested by the Kempeitai due to those activities."

During the period mentioned by Mr. Soler, Japanese military notes had an average exchange value of 1.88 notes to each Philippine peso. Thus ₱100,000 to ₱150,000 in Japanese military notes was equal to approximately ₱53,191 to ₱79,787 in Philippine pesos, which, in turn, would be equal to $26,595.50 to $39,893.50 in American dollars.

There is no record that the claimant has at any time filed a claim with the Department of the Army for reimbursement for any items furnished to American

prisoners, and there is no statute or regulation under which her claim may now be settled and paid administratively.

It is believed that the facts and circumstances in this case present a proper basis for equitable relief by the Congress, and this Department is of the view, based upon all the evidence submitted in this case, that an award in the amount of $30,000 would constitute a fair and equitable settlement for all money and supplies furnished and distributed by Mrs. Lorenza O'Malley and her former husband, Ramon de Amusategui (now deceased). However, it is the opinion of this Department that the claimant's children, Jose Maria Gerardo (now 20 years of age) and Ramon (now 13 years of age), as heirs of their father, should receive a portion of this award. Inasmuch as this Department is unable accurately to determine the amount of their distributive shares in such property, it is suggested that of the total award of $30,000, they should receive $5,000 each. Such a division of the award would appear to be substantially fair and just under the circumstances of this case. Accordingly, for the purpose of accuracy, it is recommended that the subject bill be amended to read as follows:

"A BILL For the relief of Mrs. Lorenza O'Malley (de Amusategui), Jose Maria de Amusategui, and the legal guardian of Ramon de Amusategui

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any amount in the Treasury not otherwise appropriated, to Mrs. Lorenza O'Malley (de Amusategui) the sum of $20,000, to Jose Maria Gerardo de Amusategui the sum of $5,000, and to the legal guardian of Ramon de Amusategui the sum of $5,000, all of Fort George G. Meade, Maryland. Such sums shall be in full settlement of all claims against the United States for money and supplies furnished and distributed by Mrs. O'Malley and her former husband, Ramon de Amusategui (now deceased), to American prisoners of war in the Philippines during World War II: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a midsemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

Subject to the foregoing recommendations, the Department of the Army would have no objection to the enactment of the subject bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

AFFIDAVIT

I, Lorenza V. O'Malley, being first duly sworn on oath, depose and say:

At the time of the events described herein I was a national of Spain resident in the Philippine Islands. I was born in San Isidro, Nueva Ecija, Luzon, Philippines, on April 7, 1916. My father, Dr. Gerardo Vazques, was a famous doctor and surgeon in Manila. He was the head of the department of surgery, Santo Tomas Medical University, and a professor of medicine at the university.

I was married on March 19, 1933, to Ramon de Amusategui, a native of Lequeitio, Vizcaya, Spain; we and our two sons were registered in the Spanish consulate of Manila as citizens of Spain. In the years prior to the outbreak of World War II my husband and I were very comfortably situated, with my husband holding the position of vice manager of the Ahorro Insular, a large building and loan association in Manila. My husband was well to do, and he invested a considerable part of his money in expensive and valuable jewelry which he later sold in order to aid the American prisoners of the Japanese. We had had many friends among the American army officers in Manila, and when the war began my husband and I resolved to do what we could to help the American cause. I will briefly set forth below some of the incidents in support of my claim for reimbursement for the money which my husband and I contributed to the American prisoners of war.

At the time of the Japanese attack on Pearl Harbor my husband and I alerted ourselves for methods to put into execution our resolution to help Americans. Our first chance came when we found that certain American prisoners of war had been left in Manila to care for the American casualties from the Japanese

bombings of the Philippines. In cooperation with Mary Bichara and Berta Segovia we managed to contact these prisoners who had been confined in the Santa Scholastica College, Pennsylvania Street, Manila, in the early part of 1942. We were advised by these men of their impending transfer to Bilibid Prison, Manila, and we kept on the lookout for a means of communicating with them. We found this means when we discovered a hole in the wall beside the hospital building. We were able to use this hole as a means of access to the prisoners from September 1942 to the latter part of January 1943, when it was discovered and closed by the Japanese. However, before the Japanese made this discovery we were able to pass secretly to the prisoners large amounts of money, medicine, food, clothing and equipment. Looking about for another means of assisting these unfortunates, we contacted one Mrs. Norton, an American missionary who had permission from the Japanese to send food, clothing, and medicines to the prisoners in the prison camp on Park Avenue, Pasay, Manila. To the men there we gave large amounts of food, clothing and medicines which my husband and I bought out of our own funds.

At this point we believed that we could render our aid more effectively if we could join a large group devoted to this type of assistance. We therefore in March of 1943 joined the "Miss U" group, an association of individuals who had combined together to alleviate the sufferings of the American prisoners. To this group my husband and I furnished large amounts of money, food, medicine, clothing, and equipment which was used to aid and comfort the prisoners located in the Cabanatuan Prison Camp. At the same time my husband, who had earlier joined the Rainbow Unit, guerrillas at large, through his contacts was able to furnish still further aid to the American captives in Bilibid Prison, Nichols Field, and the Port Area, Manila, and later to Las Pinas.

In addition to the food, medicine, clothing, and money mentioned above, my husband and I used our own funds to cash personal checks and promissory notes of the prisoners, written by them on scraps of paper. I estimate that such checks and notes amounted to more than $8,000. Because of the danger that the Japanese would discover this evidence of our connections with the prisoners, following the arrest of my husband and myself by the Japanese, it was destroyed by the person in whose custody we had left it, my brother-in-law, Kurt Gantner. My husband was arrested first by the Japanese; my own turn came much later, while I was distraught over his absence. Ramon died in Bilibid Prison on October 14, 1944, as the result of the brutality and indignities inflicted upon him by the Japanese; I was released after a brief imprisonment because I feigned insanity and was able to convince my captors that I was insane.

A complete account of our activities, properly authenticated, is on file in the Department of Defense. The United States Government honored my late husband and me on May 23, 1948, when I accepted on Ramon's behalf the Medal of Freedom with Gold Palm and for myself the Medal of Freedom with Bronze Palm. Copies of a letter dated May 19, 1948, from the United States Army, Philippines, Ryukyus Command, setting forth the Army's recognition of our aid and assistance to the American prisoners of war, are attached hereto.

My husband and I sold the following property in order to obtain money to aid the prisoners (the sale value or the value we placed upon it is listed in the right column):

	Value
Ring gold band, with 3 diamonds (1 of 1 carat; 2 each of ½ carat)	$2,400
Ring, platinum, with 2 carat emerald-cut diamond	4,000
Ring, platinum, with rosette of 9 diamonds	1,750
Ring, gold band, with 3 diamonds (diamonds smaller than above)	1,500
Pendant, large sapphire, surrounded by diamonds	2,000
Bracelet, platinum, with 27 diamonds	4,500
4 jeweled wrist watches, ladies'	500
Ring, wide gold band, antique, with large amethyst	100
Bracelet, wide gold band with cameos	75
2 Swiss watches, men's	250
Ring, gold, with large ruby	650
Ring, gold band, with sapphire surrounded by diamonds	500
Ring, gold band, with 3 diamonds (matching first item above)	2,600
Ring, gold, with large alexandrite	1,500
Ring, gold, with amethyst	150
Platinum cuff links, diamond set	200
Gold tiepin with diamond and ruby tear trop	150
Gold tiepin with diamond and pearl	100

	Value
Platinum tie clasp with diamond set cloverleaf	250
1939 Chrysler limousine	2,000
Miscellaneous clothing and shoes	1,000
4 camphor chests, carved	160
Singer sewing machine	50
Electric range	250
2 large cribs, mahogany	60
2 Chinese tables with elaborate brass tops	50
4 nesting Chinese tables, mother-of-pearl inlaid	75
Phonograph records, collection	1,500
Typewriter	75
Proceeds from sale of family house	5,000
Total of property	33,395

The above total of $33,395 and the checks and notes previously referred to, amounting to more than $8,000, make a grand total of at least $41,395 which my husband and I contributed to the welfare of the American prisoners of war. We have never been reimbursed for all or any part of this sum.

In addition to the foregoing, I know that my husband, Ramon, from the large commissions and salary he earned, made very generous contributions to the prisoners. The amount of these contributions I do not know but I am sure that they amounted to several thousands of dollars. He was never reimbursed for all or any part of these contributions either.

On April 5, 1947, I married Maj. Edward Alber O'Malley, United States Army, and we now reside at Fort George G. Meade, Md. I became a citizen of the United States by naturalization on June 13, 1949, in the United States District Court in Baltimore, Md.

LORENZA V. O'MALLEY.

Subscribed and sworn to before me this 18th day of December 1953, in Anne Arundel County, Md.

JOHN J. SHEA,
Notary Public, Maryland.

[SEAL]

My commission expires May 2, 1955.

AFFIDAVIT

REPUBLIC OF THE PHILIPPINES,
City of Manila, ss:

I, Jose Maria de Amusategui, Filipino citizen, naturalized, of legal age, after being first duly sworn, depose and say:

That Ramon de Amusategui and his wife Lorenza Vasquez de Amusategui, now known as Lorenza O'Malley were my brother and sister-in-law, respectively;

That Ramon de Amusategui was, before his death, the manager of the El Ahorro Insular, a building and loan association in the Philippines with an actual paid-up capital of nearly a million pesos. That as such manager he used to receive a substantial salary, and because of the numerous business contacts and connections which he acquired by virtue of his position, he had acted in big real-estate dealings and transactions as commission agent, before the war and during the Japanese occupation, until he was taken prisoner by the Japanese military police.

That his wife Lorenza Vasquez belongs to a wealthy family in Manila, she being the daughter of one of the most prominent physicians in the Philippines;

That Ramon and Lorenza had helped the American prisoners of war in various camps financially, from the beginning of 1942 till the middle part of 1944 when Ramon was arrested by the Japanese military police and Lorenza too was also arrested for the same activities later;

That to the best of my knowledge and belief, Ramon and Lorenza had personally and out of their own pockets rendered financial help to the American prisoners of war to the amount of at least ₱60,000 or 30,000 American dollars;

That on several occasions I have seen him pack thousands of pesos in small packages to be smuggled inside the prison camps;

That for this purpose Lorenza sold the following jewels, among others, which I do not now remember:

1. Four ladies wrist watches; two of Swiss make, the third an Elgin, and the fourth a Waltham, all of solid gold;

2. Five rings, the first, with wide gold band, antique setting with a large amethyst (genuine) the size of a ten cent piece; the second, a gold band with three diamonds of about one karat each; the third, a platinum ring with a two-karat emerald-cut diamond in the center; the fourth, a platinum gold band with nine diamonds in the shape of a rosette; and the fifth, a gold band ring with three small diamonds of about one-half karat each.

3. A platinum bracelet with 27 diamonds and other smaller diamonds in between, which was bought by Mr. Ernest Johnson (now deceased) who was the manager of the United States Maritime Commission for ₱7,000 or 3,500 dollars American. I was with Lorenza when this platinum bracelet was bought by Mr. Johnson.

On the part of Ramon, he sold the following jewels to help the American prisoners of war, and other jewels which I do not now remember:

1. Five rings, the first, a gold ring with a large genuine bood-red ruby; the second, a gold ring with a large genuine sapphire surrounded with small diamonds; the third, a gold ring with a garnet stone; the fourth, a gold ring with an amethyst; and the fifth, a gold ring with three diamonds of about a karat each.

2. Two Swiss gentlemen's watches, of gold, of the most expensive kind.

I know all these things about those jewels and their sale because I was the one who put them in contact with a certain Mr. Romero, now deceased, who was the manager of a large pawn shop and jewelry store in Manila, who bought their jewels.

That among the household effects that Ramon and Lorenza had disposed of to help the American prisoners of war were, as much as I can remember: A Singer sewing machine; a General Electric range, four camphor chests with Chinese carvings, and a set of Chinese carved tables with inlaid mother-of-pearl, realizing from these sales approximately ₱6,000 or 3,000 American dollars.

That they had also personally cashed checks for the American prisoners to the value of more than $8,000 American, but all of these checks I understand were burned during the fight for the liberation of Manila.

That they also sold an excellent collection of records for ₱3,000 ($1,500 American), and this also went to finance the American prisoners of war;

I also know that they sold their Chrysler limousine car which they had bought in 1939 for ₱4,000 or $2,000, the major part of the proceeds of which also went to help the American prisoners of war;

That I also know that the father of Lorenza Vasquez gave her ₱10,000 ($5,000) which was part of the proceeds from the sale of their family home in Malate, Manila, and that this amount was used totally to buy medicines and to make cash advances to the prisoners of war;

That I can vouch for this because I have personally seen records and letters from the prisoners of war expressing thanks and gratitude for the help that Ramon and Lorenza were extending to them, which had ameliorated their tragic situation considerably. One Colonel Mack especially wrote many letters on his own behalf and on behalf of the men under him;

That my brother Ramon de Amusategui, in view of all the services that he had rendered to the American Army and the prisoners of war, and because of his intelligence work for the United States was arrested by the Japanese military police, incarcerated for several months, and was made to undergo horrible tortures, from the effect of which he died in prison. And that he was later on awarded the medal of freedom by the American Government posthumously and that his wife Lorenza Vasquez was also given a medal by the United States Government.

Further affiant sayeth none.

Manila, July 20, 1953.

JOSE MA. DE AMUSATEGUI, *Affiant.*

Subscribed and sworn to before me on the date and in the place above written, affiant exhibiting his residence tax certificate No. A-0040892 issued in Manila on January 7, 1953.

JOSE H. CRUZ, *Notary Public.*

Until December 31, 1953.

AFFIDAVIT

DISTRICT OF COLUMBIA, *ss:*

Maria Bichara Baker, being first duly sworn on oath deposes and says:

In the years prior to World War II, I became acquainted with Mrs. Lorenza V. O'Malley, then Mrs. Lorenza V. De Amusategui through her father, Dr. Gerardo Vasquez, who then was our family physician. Through Lorenza, I met

her former husband, Ramon De Amusategui (now deceased), a native of Spain. He was a ranking official in a large building and loan association in Manila, El Ahorro Insular. Both of the De Amusateguis and the Vasquez families were popular members of the Spanish society in Manila. Lorenza and her sister had weekly appointments in my beauty shop. My shop was located at 294 A. Mabini, Ermita, which was a few blocks from Lorenza's home. Thus Lorenza and I struck up a friendship that has lasted through all of these years. I was often invited to attend many parties they gave for their American friends, mostly United States officers stationed in Manila and at Clark Field. These parties were held at their lovely home and at various night clubs in Manila. For these occasions, Lorenza always wore beautiful jewelry. I remember admiring on her a platinum diamond braclet with more than 20 diamonds, which I am sure was worth at least $3,000, an emerald-cut diamond ring (blue white), a pendant with diamonds and other expensive stones, and several other pieces of jewelry, all genuine. Furthermore, through my close association with the De Amusateguis, I had the opportunity to observe the luxurious life they led. Their home was what was at that time most people there would call stateside: meaning it had all the modern conveniences—elaborate furnishings, modern kitchen with electrical appliances, tiled bathrooms, with mirrored walls. They also owned a Chrysler limousine. I, like many others of their friends, considered them very wealthy.

When the war broke out, I know for a fact that both Ramon and Lorenza started helping American POW's as early as January 1942, when the Japanese Imperial Army interned many Americans and other allies in Santo Thomas internment camp. Two months later, in March of 1942, I was able to establish a contact with Santa Scholastica College where there were American prisoners of war from the United States Navy. I took Lorenza with me on my trips there as I knew that she too was obsessed with the idea of alleviating the suffering of American prisoners of war. Like me, Lorenza helped those men with money, food, and whatever else they needed. When these men were transferred from Santa Scholastica College to Bilibid Prison in Manila, Lorenza and I continued to smuggle to them money, food and other items. Shortly after we had established contact in Bilibid, Lorenza received a note from her brother-in-law, Capt. Edward L. Short (now deceased) that he was taken to Bilibid as a prisoner of war. Lorenza then also began sending him large sums of money, for himself and also for him to distribute among those he thought needed the money.

After Bataan surrendered, we heard that the Japanese had taken the American POW's to Camp O'Donnell in Capaz, Tarlac, and that the American soldiers were dying by the hundreds of malnutrition and cruel treatment from the hands of the Japanese soldiers. The De Amusateguis and I immediately established several contacts—I through a loyal Filipino by the name of Manuel Abraham, and the De Amusateguis, through their own trusted couriers. It was never our practice to reveal the names of our messengers as these messengers insisted upon keeping their names a secret. But I knew their means of contact was completely reliable, and many times when my messenger was delayed for more than a week in Manila or my contacts were temporarily cut off because of a more rigid vigilance on the part of the Japanese, I would use their means for sending money and supplies. In turn, whenever I had a better means of communication the De Amusateguis would use mine.

Sometimes I would receive notes addressed to Lorenza from POW's through my messengers and I would call Lorenza and tell her that I had delicious candies that were sent to me from the province, and ask her if she would care to come and taste them. She would immediately come to my house and after she was through reading the notes from the prisoners, she would let me read them too. Many of those notes that I read contained acknowledgment of sums of money, food, medicines and other items. I recall reading numerous notes acknowledging sums of money ranging from 100 to 1,000 pesos. I must also say, that the contents of those letters always spoke of great appreciation for the wonderful work and help the De Amusateguis were extending to prisoners of war located in several camps in Manila and outside Manila, particularly since the help was being extended for purely unselfish reasons. I know that both Ramon and Lorenza were doing this great work because of their love and admiration for the United States, and not because they ever had any idea of compensation. As a proof of their unselfishness, I can say that they encouraged other parties to carry on the same work they were doing to help the cause and were not glory minded. They also knew that if the Japanese ever caught them they would most probably pay with their lives, as Ramon finally did, and they were ready to sacrifice themselves for what they thought was their duty toward the country they admired so much.

When the De Amusateguis found a good contact for the Cabanatuan POW's, I know for a fact that both Ramon and Lorenza contributed most generously for that camp, since that camp was the largest in Luzon. Just shortly before this contact was established Lorenza and Ramon sold their Chrysler limousine to be able to help the prisoners at O'Donnell. Later when they opened a contact with Cabanatuan—they needed more money, so they started selling little by little the beautiful jewels they owned and that I had admired so much to be able to send to a certain Colonel Mack thousands of pesos for him to distribute among other POW's in Cabanatuan. I have personally seen the De Amusateguis pack this money together with medicine and other items. I often helped them when I was not engaged in my personal underground activities and I can vouch that the De Amusateguis habitually added as much as 3,000 to 5,000 pesos of their own money to the contributions which they had solicited from their wealthy friends in Manila. I also saw many times checks from the POW's, which the De Amusateguis had cashed from their own pockets. I must add that I read many letters sent to the De Amusateguis by Colonel Mack and other POW's. These letters acknowledged receipt of the money, medicines, etc., sent by the De Amusateguis to the Cabanatuan Prison Camp. These letters amused me with their headings "Dear Sparkplug, Sparkie or Neel" (Ramon's nickname in the underground) and "Dear Screwball No. 3," which was Lorenza's name in the underground.

At one time during the war, I recall Lorenza mentioned that she received 10,000 pesos ($5,000) from her father for her share of the proceeds from the sale of his property and that she had sent half of it in cash to Colonel Mack in Cabanatuan for distribution to the POW's. I also recall going with her shortly after to different druggists to buy badly needed medicines for the POW's with the other half of the 10,000 pesos.

Among the other personal items sold by the De Amusateguis to further aid the POW's I recall an excellent collection of phonograph records, which the couple had painstakingly collected since their marriage in 1933, and beautiful camphor chests which were hand carved, and clothing. Lorenza sold so much of her shoes and other clothing, that often during the war I would tell her that I hoped the war would end soon so that I could see her dressed like a human being again. I also recall seeing Lorenza trying hard to learn to cook over a charcoal burner, after selling her beautiful and large electric stove, the proceeds from the sale also having been sent to Cabanatuan prison camp.

I also know that Ramon through his high position in the office where he worked before the war (until the day he was arrested) was able to make excellent dealings with people selling their property during the war. Through these connections Ramon earned excellent commissions, part of which he used to aid the prisoners in Cabanatuan as well as American POW's in other camps in Luzon.

After Ramon was arrested by the Japanese military police in May of 1944, Lorenza sent word to me to stay away from her. This she did to spare me, as she knew she would be the next victim, and she did not want me to suffer the same fate if the Japanese noticed or suspected our connection in the underground. Two days previous to Ramon's arrest I had sent money and supplies through the De Amusateguis means of contact and I was afraid that they might have been intercepted. But months later, after Ramon's death, I learned that he was able to destroy all evidence that would have implicated others and had not revealed any names.

Sometime in January of 1945 I heard from various sources that Lorenza too had been arrested by the Japanese military police but was able to escape execution by feigning insanity. Shortly before the liberation of Manila by the American forces, I was told by a friend that Ramon had died in Bilibid Prison Camp from horrible tortures inflicted by the Japanese. I grieved for Ramon whose extreme loyalty to the American cause had caused him not only to sell the very valuable jewels which he had once bought so proudly for himself and his wife, as well as other items, all for the POW's but in the end cost him his life after a series of extreme physical and mental torture under the hands of the Japanese military police. I grieved more so for him, knowing that as his obsession in helping the prisoners grew from day to day, he lost a lot of weight and his lungs became diseased. In spite of that he refused to buy much-needed medicine to combat the disease, for he told me that those medicines cost a lot of money, and he did not want to spend money for himself. He insisted that the American prisoners needed that money far more than he did, and not once did he falter from that belief he threw his heart, body and soul into the campaign to help the prisoners of war.

In conclusion I want to say that Lorenza O'Malley has not been physically well since the day she was told by her family that Ramon, husband, had died

in Bilibid Prison in October of 1944. A few years ago she was acutely ill with a very serious heart condition. Though she recovered from that disease, it has left her with a chronic heart condition which demands constant attention by a heart specialist. The boundless energy which she possessed when I knew her before the war and during her underground activities is gone. I can truthfully say that when I saw her the first time here in the States, I was shocked at the great change in her appearance. Lorenza, who in the past was sturdy, has been so weakened by disease that physical exertion is an effort.

MARIA BICHARA BAKER.

Subscribed and sworn to before me this 30th day of July 1953.

ISRAEL NISS, *Notary Public, D. C.*

My commission expires April 14, 1954.

AFFIDAVIT

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Marcelina V. Short, being first duly sworn on oath deposes and says:

That she is the sister of Mrs. Lorenza V. O'Malley, the claimant; that she knew Ramon De Amusategui, Mrs. O'Malley's deceased husband, who died as a result of torture by the Japanese during World War II for his assistance in helping American war prisoners of the Japanese; that Mrs. O'Malley and Mr. De Amusategui sold their joint and personal property to give financial assistance to the American prisoners of war of the Japanese; that Mrs. O'Malley sold the following property and used the proceeds to assist the American prisoners:

Ring, gold band, with 3 diamonds; ring, platinum with an emerald-cut diamond; ring, diamond rosette, set in platinum with 9 diamonds; ring, gold band, with 3 diamonds; pendant, large sapphire, surrounded by diamonds, with silver chain; platinum bracelet with 27 diamonds; 4 ladies watches; ring, wide gold band, antique setting with large amethyst; bracelet, wide gold band with cameos.

1939 Chrysler limousine; clothing and shoes; 4 camphor chests; 1 Singer sewing machine; 1 large electric range; 2 Chinese tables with brass tops; 1 nest of 4 Chinese hand carved tables inlaid with mother of pearl; phonograph record collection.

That when my father sold the family house he gave ₱10,000, or the equivalent of $5,000, to Mrs. O'Malley and that she donated the full amount to the American prisoners of war.

My husband Capt. Edward L. Short, who died in a Japanese prisoner-of-war camp, wrote to me and to Mrs. O'Malley to stop risking her life to aid the prisoners; these letters from my husband were destroyed so that they would not fall into the hands of the Japanese; I remember that the letters from my husband stated that he and the other prisoners appreciated the financial assistance given them by Mrs. O'Malley and Mr. De Amusategui.

MARCELINA V. SHORT.

Subscribed and sworn to before me this 30th day of October 1953.

KARAWAY KENTON,
Notary Public, California.

My commission expires August 24, 1956.

LOS ANGELES, CALIF., *November 8, 1953.*

I, George L. Curtis of 1611 Mandeville Canyon Road, Los Angeles 49, deposes and says:

1. That I was living in Manila, Philippine Islands, when war broke out in 1941, and that I was called to duty by the 16th Naval District in Manila. Formerly I was employed as general manager for the Luneta Motor Co., of the Philippines.

2. That I knew Edward L. Short before the war started for about 5 years, and that he was employed by the B. F. Goodrich Rubber Co. and stationed in Manila. That we were imprisoned by the Japanese in Bilibid and Cabanatuan from May 1942 till December 1945 when we were shipped to Japan as prisoners. Capt. Edward L. Short was killed during a bombing of one of the prison ships en route to Japan in December of 1945.

3. That while in both prisons I knew that Capt. E. L. Short, O–890050, received large sums of money, food and other items at different times from both Mr. and

Mrs. Ramon de Amusategui, his in-laws, whom I also knew prior to the war. Both Mr. and Mrs. Amusategui were Spanish citizens. Mrs. Amusategui was the daughter of Dr. Gerado Vazquez, a very prominent and well-to-do surgeon and physician in Manila.

4. That I, too, was recipient of some of the said help extended by Mr. and Mrs. Amusategui during my incarceration. The underground nicknames for Mrs. and Mrs. Amusategui were "Sparkplug" and "Screwball No. 3."

5. I know that Captain Short tried several times to have Mr. and Mrs. Amusategui stop doing the unselfish work they were doing for us Americans because we knew that if they were caught by the Japanese it would mean certain death for them.

6. Mr. and Mrs. Amusategui kept on with their work and I later heard that Ramon de Amusategui paid with his life, and Mrs. Amusategui was also imprisoned but later released by feigning insanity. I didn't know of the latter till I was liberated in September of 1945, and upon my return to Manila from the Japanese Prison Camp No. 17B located in Japan.

GEORGE L. CURTIS.

AFFIDAVIT

KIZILCULLU IZMIR, TURKEY, *August 13, 1953.*

I, Lt. Col. Earl R. Short, O31685, United States Army, solemnly swear that: Prior to World War II, I was stationed in Manila and for about 1 year before the beginning of World War II was well acquainted with Mr. and Mrs. Ramon Amasatguie. I knew them to be pro-American and anti-Japanese.

I was a prisoner of the Japanese from May 6, 1942, to September 8, 1945. During this period I was in Cabanatuan, Luzon, from June 1, 1942, to February 1944.

In the fall of 1942 underground operators were able to establish communications between Manila and Cabanatuan. These contacts improved steadily until, after a few months, large quantities of money, food, and medicine, were coming into the camp both to individuals and to the American camp headquarters.

Soon after the establishment of communications, it became common knowledge in the camp that Mr. and Mrs. Ramon Amasatguie were among the most actively engaged in supplying these items.

A Colonel Mack, who was on the camp end of the underground, told me that Ramon Amasatguie was certainly sticking his neck out for the Americans.

I have no idea what the cash outlay of the Amasatguie's was, but it must have run into thousands and thousands of dollars.

The assistance rendered to a large group of desperate Americans by this loyal couple undoubtedly saved many lives and was performed at great personal risk.

Before I was sent to Japan in March 1944, we had reliable information in camp that Ramon Amasatguie was being tortured by the Japanese in the dungeons of Fort Santiago, Manila, and later that he had died there. This was confirmed to me by Mrs. Amasatguie in September 1945, when I returned to Manila.

When contacted regarding this affidavit, I was astonished that the United States Government had not long ago made a settlement with Mrs. Amasatguie.

EARL R. SHORT,
Lieutenant Colonel, United States Army.

Subscribed and sworn to before me at Headquarters, Allied Land Forces, Southeastern Europe, Izmir, Turkey, this 14th day of August 1953.

ROBERT N. ANDERSON,
First Lieutenant, MPC, Adjutant,
Detachment No. 3, 8478th AAU.

AFFIDAVIT

I, Evangeline C. Neibert, of legal age, Filipina, and residing at No. 1340-B Gov. Forbes Street, Sampaloc, Manila, Philippines, after being duly sworn depose and say:

That I was an employee of the YWCA, Manila, at the outbreak of the last war until the latter part of 1942;

That during the period from February 1943, until February 1945, I was a member and courier of a secret organization which operated in the city of Manila and nearby provinces and known then as the "Miss U Group", established for the

purpose of extending material help to the American prisoners of war confined in the various concentration camps in the island of Luzon, Philippines;

That among the active members of the said "Miss U Group" were the spouses Ramon Amusategui (now deceased) and Lorenza Vasquez de Amusategui (now Mrs. Lorenza Vasquez O'Malley) with whom I became intimately associated, having lived with them in their house at Arellano Avenue, Singalong, Manila, from October 1943 until September 1944;

That it was during my stay with the aforesaid spouses that Mr. Ramon Amusategui was arrested by the Japanese military police in May 1944;

That I continued to live with Mrs. Amusategui and her two sons in their house at Arellano Avenue, Manila, until September 1944, when we all moved to the house of Mrs. Amusategui's father at M. H. del Pilar, Ermita, Manila, where we stayed until the liberation of Manila in February 1945;

That I personally knew that Mr. and Mrs. Ramon Amusategui, before and during the period that I stayed with them, gave, from their personal funds and property, huge sums of money, clothing, medicines, food, and other personal necessities to the American prisoners of war concentrated in Capas, Tarlac; Cabanatuan, Nueva Ecija; Bilibid Prisons, Manila; Park Avenue, Pasay, Rizal; and Santo Tomas University, Manila, and to the guerrillas in the mountains near Manila;

That when I came to live with the aforesaid couple I personally made deliveries to our contact person in Cabanatuan, Nueva Ecija, with great risk to my life and safety, of the money, food, clothing, medicines, and other personal necessities that said couple decided to give to the American prisoners of war;

That our contact person, then Miss Naomi Flores (now Mrs. Naomi Flores Jackson), who lived just outside the concentration camp at Cabanatuan, made the final deliveries to the said American prisoners of war in return for which acknowledgments or receipts were issued by the American prisoners;

That said acknowledgments, which were delivered to me by the aforementioned Miss Flores (now Mrs. Jackson), were destroyed during the fight for the liberation of Manila.

Further, affiant sayeth not.

Manila, Philippines, July 21, 1953.

EVANGELINE C. NEIBERT.

REPUBLIC OF THE PHILIPPINES,
City of Manila, ss:

Subscribed and sworn to before me this 21st day of July 1953, affiant exhibiting to me her residence certificates Nos. A–0229931, issued at Manila, Philippines, on February 2, 1953, and B–0082899 issued at Manila, Philippines, on February 24, 1953.

MARCIAL ESPOSO,
Notary Public, until December 31, 1954.

I, the undersigned, Bertha L. Schmitt, of legal age, married, and a resident of Fresno, Calif., do hereby attest to the following facts concerning Mrs. Lorenza Vazquez O'Malley, the wife of Edward A. O'Malley, a major in the United States Army and at present stationed at Fort Meade, Md.

That I personally know Mrs. O'Malley, formerly known as Mrs. Lorenza Vazquez de Amusategui, wife of Ramon Amusategui, a Spaniard residing in the city of Manila, Philippine Islands, at the time of World War II. I have known Mrs. O'Malley and her family since childhood and have lived with them for almost 2 years during the aforementioned war, by the grace of her father (now deceased), Dr. Gerardo A. Vazquez, a leading Spanish physician-surgeon of wealthy means, in the city of Manila.

During the war and up until the middle of 1944, Lorenza and her husband, Ramon Amusategui, dedicated their entire time and lives in aiding American prisoners of war with medical, material, and moral support, ignoring the precarious situations and dangers they and their family encountered during said time.

I also wish to state that Ramon Amusategui exerted and expended all his extra time, strength, and money on behalf of American prisoners of war. His employment at the time was very lucrative and in the capacity of vice manager of a building and loan association, the Ahorro Insular, he was able to acquire large commissions in addition to his salary. His contact with wealthy leading residents of the city was a great asset in acquiring aid for the many prisoners-of-war

camps, to which purpose he had set his indefatigable goal until his death in the hands of the Japanese Imperial Army.

As a very close friend of the family and a great sympathizer of the cause to which we were all concerned, I aided and abetted Mr. and Mrs. Amusategui in any manner in which I could. I had been present numerous times during which Lorenza Amusategui would herself wrap large quantities of medicine, food, clothing and money; the latter never in amounts less than ₱300 or ₱400 at a time and see these safely delivered to underground contacts for the various prisoner of war camps in and around the city of Manila. Some of these camps were: Fort William McKinley, Nichol's Field, Camp O'Donnell, Las Pinas Camp, Park Avenue Camp, Bilibid Prison and last, but not least, the prisoner of war camp at Cabanatuan in northern Luzon. I have personally walked miles or ridden with Mrs. Lorenza Amusategui many a time to help in her courageous and loyal tasks to aid American prisoners of war in the Philippines. I have also run errands for her and her husband to take money to certain underground contacts for delivery to said prisoners of war. One instance which I recall was immediately after Ramon Amusategui's arrest by the Japanese, when I took the amount of ₱500 ($150) for delivery to the Camp at Las Pinas.

That I know for a fact that Lorenza V. de Amusategui and her husband, Ramon, owned valuable jewelry, a car, furniture, and other personal property which they sold little by little to get funds for the American prisoners of war. I also personally vouch for the fact that Mrs. Amusategui's father who was of wealthy means in the city, gave her (Mrs. Amusategui) a share of the proceeds of his home at the time he sold same during the war. This amounted to ₱10,000 ($5,000) and immediately Lorenza Amusategui sent one-half of this ($2,500) to the prisoners of war at Cabanatuan and used the other half to purchase vitamins, drugs, quinine, sulpha and other medical aid which was very badly needed at the time. I should add herewith that I personally saw records and letters from inmates of said camp who were in charge of distributing all aid received, telling of the great work which the Amusateguis were performing and stating also of the death rates which were slowly but surely diminishing. I also was with Mrs. Lorenza V. de Amusategui when she sold her diamond bracelet for ₱7,000 ($3,500) one of the many items she parted with to further the aid to American prisoners of war.

In the course of this clandestine underground activity, I was an ever watchful witness always concerned about my friends' welfare and knowing personally many of the other members of their underground group, having a cousin among them who was arrested by the Japanese and later freed, a fate not meant for Ramon Amusategui who died a hero's death in the torture chambers of Fort Santiago under the hands of the Japanese.

I personally warned Ramon Amusategui of my cousin's arrest on May 20, 1944, knowing that his turn would come next. He and his wife gave me checks and letters for safekeeping which I buried. These checks as I recall were from various American officers and amounted to approximately $8,000 which they (Ramon Amusategui and his wife) had cashed themselves. At a later time Mrs. Amusategui requested the return of these checks in the fear that she was endangering my welfare as times were getting precarious day by day. Ramon Amusategui was arrested in May 1944 and from underground sources we learned of his death in October of that year.

I was also present at the home of Dr. Gerardo A. Vazquez the night of January 5, 1945 when Mrs. Lorenza V. de Amusategui was arrested by a group of 10 or 12 Japanese military police with bayonets drawn and guns pointed only after we were each herded into rooms to open every drawer, closet, and cabinet and throw out all contents in a minute search for fire arms or any evidence of guerrilla connections. She was taken but released the following evening after a clever pretention of insanity.

The facts that I have above stated are those I can at present recall and to which I have knowledge of Ramon Amusategui and his wife gave much more than material aid and to my knowledge and experience of the ordeals of war in a vanquished nation, I have known none more courageous, noble and loyal until his death than Ramon Amusategui. His heroic fortitude and undaunted character ignited with the great wish to help the American prisoners of war, has saved countless lives and caused happiness and morals to surge up amidst a multitude of hungry, sick and desperate Americans.

Mrs. Lorenza Vazquez O'Malley in aiding and abetting her husband Ramon, forfeited her all, jeopardizing her family's lives and her loved ones and never once thinking of repayment. I am of the opinion that Mrs. Lorenza O'Malley is deeply

deserving of any aid or remuneration that may be allowed to her by the United States Government of which country she is now a citizen.

Mrs. BERTHA L. SCHMITT, *Fresno, Calif.*

STATE OF CALIFORNIA,
County of Fresno, ss:

On this 3d day of July 1953, before me, Alma M. Wagner, a notary public in and for said county and State, personally appeared Mrs. Bertha L. Schmitt, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Witness my hand and official seal.

ALMA M. WAGNER,
Notary Public in and for said County and State.

AFFIDAVIT

REPUBLIC OF THE PHILIPPINES,
City of Manila, ss:

I, Pacita de Los Reyes, Filipino, of legal age, after being first duly sworn, depose and say:

That I have known the late Ramon de Amusategui and his wife Lorenza Vasquez de Amusategui, now known as Lorenza V. O'Malley, for many years even before the outbreak of the Pacific war in December 1941.

That Ramon de Amusategui was the manager of the El Ahorro Insular a mutual building and loan assocation in the Philippines, of which corporation I am a member of the board of directors and vice treasurer.

That Ramon de Amusategui had been taken prisoner by the Japanese during the war for intelligence work in favor of the United States, and for helping the American prisoners of war financially.

That Ramon de Amusategui and his wife Lorenza O'Malley had sold almost all of their jewels during the war to the value of about $20,000, the major part of the proceeds of which they had spent in helping the American prisoners of war.

That Ramon de Amusategui in view of his extensive business connection was able to get thousands of pesos as commissions by acting as agent in real estate deals and almost all of these commissions he also used to help the American prisoners of war.

That I actually know of at least 3 specific cases where he had acted as a real-estate agent in the sale of 3 real estate houses where he was able to get a commission of about ₱15,000.

That I had actually seen Ramon de Amusategui in many instances send thousands of pesos to the American prisoners of war in various camps because he oftentimes utilized my room which adjoined his in the El Ahorro Insular, in order to wrap the money he would send in banana leaves so that this money could be smuggled to the American prisoners of war surreptitiously.

That on several occasions Ramon de Amusategui would request me to keep the money amounting to several thousands of pesos in my own safe before he would send them out to the prisoners of war because my safe was less likely to be searched in case the Japanese military police would see fit to investigate.

That on several occasions Ramon de Amusategui has shown me letters and mails coming from several prisoners in Cabanatuan whom he had helped, especially from one Colonel Mack where Colonel Mack had mentioned receiving money from Ramon de Amusategui for himself and for the other soldiers and extending to him his personal gratitude and gratitude of the other prisoners under him for the help they had been receiving from Ramon and Lorenza.

Further affiant sayeth none.

Manila, June 29, 1953.

PACITA DE LOS REYES, *Affiant.*

Subscribed and sworn to before me on the date and in the place above written, affiant exhibiting her residence tax certificate No. 1–4511318 issued in Caloocan, Rizal, on March 24, 1953.

[SEAL] MARCIAL G. NATIVIDAD, *Notary Public.*

Commission expires December 31, 1954.

AFFIDAVIT

REPUBLIC OF THE PHILIPPINES,
City of Manila, ss:

I, Romeo Y. Atienza, Filipino, of legal age, married, with residence and post-office address at 51 Haig Street, Mandaluyong, Rizal, Philippines, after having been duly sworn to according to law, do hereby freely depose and say:

That I am at present the medical director of the Philippine Red Cross, Manila, having served as medical officer of such institution even prior to the outbreak of the last war and during the Japanese occupation;

That during the Japanese occupation, I was a member of the underground movement known as "Miss U Group" which had been operating in the city of Manila from the time of its organization in June 1942 up to the time of liberation;

That among the members of the said "Miss U Group" with whom I had been always in close personal contact in the course of the underground operation were the spouses Ramon Amusategui (now deceased) and Lorenza Vazquez (now remarried) who were both personally known to me long before the outbreak of the war;

That aside from their underground activities, and during the whole period from 1942 to 1944, the said spouses Ramon Amusategui (now deceased) and Lorenza Vazquez (now remarried) had also given and contributed out of their own personal funds a considerable amount of money, foodstuffs, clothings, medicine, and other personal necessities to the American prisoners of war confined or concentrated in the different concentration camps, to wit: Capas, Tarlac; Cabanatuan, Nueva Ecija; Santo Tomas University, Manila; Park Avenue, Pasay City; Port Area, Manila; and Bilibid Prison, Manila.

That I personally know that the above-mentioned spouses were one of the wealthy families residing in the District of Malate, Manila, before the Japanese occupation; and

That I had personal knowledge of the fact that the deceased spouse, Ramon Amusategui, was one of the victims apprehended and brought to Fort Santiago by the Japanese military police sometime during the month of May 1944 and finally executed before the end of said year.

In witness whereof, I have hereunto set my hand this 20th day of June 1953, in the city of Manila, Philippines.

ROMEO Y. ATIENZA.

Subscribed and sworn to before me this 22d day of June 1953, at Manila, Philippines; affiant exhibited to me his residence certificate No. A 0105454 issued at Manila on January 19, 1953.

[SEAL]

CESAR L. KIELULF,
Notary Public, until December 31, 1954.

AFFIDAVIT

REPUBLIC OF THE PHILIPPINES,
City of Manila, ss:

I, Cipriano Soler, Filipino citizen, of legal age, residing at 137 Riverside, San Juan, Rizal, after being duly sworn, depose and say:

That I have known the late Ramon de Amusategui and his wife, Lorenza Vazques de Amusategui, now known as Lorenza V. O'Malley, since 1930. That Ramon de Amusategui was the manager of El Ahorro Insular, a mutual loan and building association, and that I was the civil engineer and appraiser of said company;

That I was a Federal civil-service employee attached to the United States engineering department from May 1941 to the fall of Bataan and after liberation from 1945 to 1947;

That during the occupation and after I managed to escape from Bataan and returned to my office at the El Ahorro Insular in May 1942, I learned that Ramon de Amusategui was already engaged in the organization of a unit to help American internees in Santo Tomas. These activities were later expanded in scope to help all American prisoners in Cabanatuan, Nueva Ecija, Philippines. He personally spoke to me of his plans, in fact I helped him with my own money as much as I could. I helped Ramon de Amusategui to sell his car and wrap the money from that sale in bundles of ₱50 and ₱100 each including some medicines and food stuff to be delivered to certain Major Mack in Cabanatuan. I helped him to deliver said packages in several instances, sometimes to Mrs. Utinsky and some-

times to Mr. E. E. Johnson, former maritime commissioner, who was hospitalized at the Doctor's Hospital in Malate, city of Manila.

We worked together in buy and sell of real estate and as stated above he delivered almost all the money he used to make to help the American prisoners and internees. His sources of income, aside from real estate profits were the sale of his personal properties such as his car and a big pile of phonograph records which I helped him sell; also on one occasion I helped him sell some jewelry belonging to his wife;

On my record as a former employee of the Federal civil service and for work done for the Americans in Santo Tomas, Manila, and Cabanatuan, Neuva Ecija, which is on file in the United States, I do not hesitate to take an oath and say that Ramon de Amusategui was one of those who helped most the Americans. From my intimate knowledge of his work, I am ready to state that he spent from one hundred to one hundred fifty thousand pesos (₱100,000 to ₱150,000) in Japanese military notes between 1942 to May 1944 when he was arrested by the Kempeitai due to those activities.

Manila, July 1, 1953.

CIPRIANO SOLER, *Affiant.*

Sworn to and subscribed before me on the date and in the place above-written affiant exhibiting his residence tax certificate No. A-4408224 issued in San Juan, Rizal, on January 24, 1953.

[SEAL]

MARCIAL G. NATIVIDAD,
Notary Public until December 31, 1954.

ABERDEEN, S. DAK., *June 29, 1946.*

To Whom It May Concern:

As an ex-prisoner of war interned by the Japanese in Military Prisoner Camp No. 1 of the Philippine Islands, Cabanautan, Philippine Islands, from June 4, 1942, to October 20, 1944, I wish to testify to the activities of one Ramon Amusategui on behalf of the prisoners of war. The officer in the camp who maintained contact with outside sources died in Japan in early 1945, and while my knowledge is limited it will establish the fact that the above-named person did render invaluable aid to prisoners of war at Cabanatuan.

As commissary officer at Cabanatuan responsible for making all outside purchases for the camp during the period February 8, 1943, to October 20, 1944, I had one of the contacts with elements outside the camp through the Filipino vendors who were permitted to sell foodstuffs and other merchandise within the camp. Shortly after assuming my office, I was contacted by Lt. Col. Edward C. Mack, United States Army, who was in contact with loyal citizens in Manila, and asked if there was any way by which large items of contraband could be gotten into the camp. Since all of the commissary supplies were requested from the Japanese camp authorities and they in turn turned our request over to authorized Filipino vendors, it was necessary to know the kind of contraband which it was desired to bring in so that it might be requested through the usual channels. During 1943 the camp authorities were very lax in their supervision of my contacts with the vendors so that it was possible to make certain of them who I felt that I could trust make the necessary contacts in Manila to procure supplies available there which were donated to the prisoners. Through this same means large quantities were sent into the camp, not all through the commissary, since another channel could handle notes, but huge quantities of beans, sugar, and in one instance, over 100 pairs of shoes were brought in. During the period that I handled commissaries the Japanese paid prisoners approximately 500,000 pesos, and during this same period, through their lax supervision and various subterfuges, the amount of 1,500,000 pesos were spent. Not all of this money came from the group which Mr. Amusategui had organized, but a sizable portion of it did.

To establish one instance of direct and positive aid, I relate the following incident. By means of donations from officers of the camp in field grades, a welfare fund or sick fund of 5,000 pesos monthly was set up which was expended on foodstuffs for indigent sick within the camp. It was possible to spend more than this if the money could be found. Four officers of the camp, of which I was one and Colonel Mack another sent out a promissory note in the amount of $1,250 obligating the United States or in the event that our claims section would not honor the note, we agreed to pay it upon our release from prison camp. For this note, Mr. Amusategui was able to get ₱8,750, an exchange rate of 7 to 1, and sent it into the camp. This money was expended for foodstuffs to augment the ration

provided by the Japanese, for the benefit of the entire camp. So far as I know this note has not been presented for redemption, at least it has never been brought to my attention. Plans were laid for the borrowing of ₱70,000 for the purpose of purchasing meat, but before this plan could be put into effect, the underground channel of communication to Manila was discovered.

On May 3, 1944, notes were discovered coming into the camp and the Japanese traced some of them back to Manila where Mr. Amusategui was involved and picked up. There was no further aid after that date. Also there was no further communication with this particular group. Upon my release, I inquired in Manila about several of the persons who had been active in rendering aid to Americans in prison camp and was informed that Mr. Amusategui had been held by the Japanese and that he was tried and sentenced to be executed. His widow told me that he died the day before his scheduled execution.

In addition to the foodstuffs and money that were sent into the camp, medicines of all kinds were sent in, particularly amoebicides, which were not furnished by the Japanese and which were sorely needed to combat amoebic dysentery. Large quantities of calamensi sirup used to combat scurvy were also furnished. Mr. Amusategui also provided news to individuals in the camp which were a great morale booster. These things I know, for I communicated with Mr. Amusategui on several occaions and various phases of this activity were discussec continually with Colonel Mack. The very nature of th eenterprise necessitated secrecy and as Colonel Mack was the principal agent, my knowledge is not as complete as it might have been. Mr. Amusategui was only one of several involved in the chain, but it is my opinion from observation and discussion of the operation of the underground with other interested persons that he was the motivating force and largely responsible for its success.

I do not know how the money that he sent into camp was obtained, but I feel that much of it came out of his own pocket. Some of this money was in the nature of a direct business transaction since, had he lived, he would have been able to cash checks, although I don't believe that that was his intention. His activities are certainly deserving of recognition and his family should receive some financial remuneration, if that is at all practicable or possible.

HAROLD K. JOHNSON,
O–19187, Lieutenant Colonel, Infantry.

Certified true copy:

E. F. FORSYTHE, *Captain, Infantry.*

HEADQUARTERS, UNITED STATES ARMY,
PHILIPPINES-RYUKYUS COMMAND,
May 18, 1948.

MRS. LORENZA O'MALLEY,
Care of Capt. E. A. O'Malley, O291024,
G–2, Headquarters, PHILRYCOM, APO 707.

DEAR MRS. O'MALLEY: It is a privilege to inform you that the United States Government has awarded your late husband, Mr. Ramon de Amusategui, the Medal of Freedom with Gold Palm for services rendered to American prisoners of war during the Japanese occupation of the Philippines.

You are invited to attend the presentation ceremony to be held at Fort McKinley at 3 p. m. on June 2, 1948, and receive this award at that time.

You may invite members of your family and friends as your guests to witness the ceremony.

It is requested that you be at Headquarters, Fort McKinley, not later than 2:45 p. m. on June 2, 1948.

Please indicate your acceptance to attend this ceremony by letter to the undersigned (or telephone University 498 or 511) prior to May 28, 1948.

Sincerely,

J. H. STUBBS,
Captain, Adjutant General's Department,
Assistant Adjutant General.

HEADQUARTERS, UNITED STATES ARMY,
PHILIPPINES-RYUKYUS COMMAND,
May 19, 1948.

MRS. LORENZA O'MALLEY,
Care of Capt. E. A. O'Malley,
G–2, PHILRYCOM, APO 707.

DEAR MRS. O'MALLEY: It is a privilege to inform you that the United States Government has awarded you the Medal of Freedom with Bronze Palm for services rendered to American prisoners of war during the Japanese occupation of the Philippines.

You are invited to attend the presentation ceremony to be held at Fort McKinley at 3 p. m. on June 2, 1948, and receive this award at that time.

You may invite members of your family and friends as your guests to witness the ceremony.

It is requested that you be at Headquarters, Fort McKinley, not later than 2:45 p. m. on June 2, 1948.

Please indicate your acceptance to attend this ceremony by letter to the undersigned (or telephone University 498 or 511) prior to May 28, 1948.

Sincerely,

J. H. STUBBS,
Captain, Adjutant General's Department,
Assistant Adjutant General.

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UNIV. OF MICH.

Calendar No. 482

84TH CONGRESS, 1st Session } SENATE { REPORT No. 478

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

ROBERT H. MERRITT

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1202]

The Committee on the Judiciary, to which was referred the bill (H. R. 1202) for the relief of Robert H. Merritt, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass:

AMENDMENT

On page 1, line 12, change the period to a colon and add the following:

Provided, That no benefits except hospital and medical expenses actually incurred shall accrue for any period of time prior to the date of enactment of this Act.

PURPOSE

The purpose of the proposed legislation, as amended, is to waive sections 15 to 20, inclusive, of the Federal Employees' Compensation Act so as to permit Robert H. Merritt, of Los Angeles, Calif., to file a claim with the Bureau of Employees' Compensation of the Department of Labor within 60 days after enactment.

STATEMENT

The statment of facts is contained in House Report 324, to accompany H. R. 1202, and is hereinbelow set forth:

STATEMENT OF FACTS

Robert H. Merritt was a trainee at the United States Maritime Service Training Station at Avalon, Calif., in 1943. An appendectomy was performed on Mr.

Merritt on September 11, 1943, at the United States Maritime Commission Hospital at Avalon, Calif., and Mr. Merritt's claim is for a continuous disability, resulting from a condition which has affected his left leg since the operation.

At the time of the operation Robert H. Merritt was 20 years of age. He remained in the hospital at Avalon for about 3 months after the operation, and then was confined to his bed at his home for an extended period thereafter. While he was in the hospital he signed papers which he thought were applications for compensation after discussing his case with several naval or merchant marine officers who came to the bedside of Mr. Merritt in connection with the matter. During his convalescence at his home and afterward he wrote several letters to the Maritime Commission in Washington, D. C. concerning his case, but did not receive a reply.

Finally Mr. Merritt consulted the Los Angeles Bar Association and was referred to a lawyer under their lawyer's reference service. That attorney filed a claim with the Bureau of Employee's Compensation of the Department of Labor which was rejected because it was not filed within the time specified by law. No hearing was accorded Mr. Merritt on the merits of his claim.

The opinion submitted by the Honorable James Mitchell opposes enactment of the bill on the ground that it would accord Mr. Merritt preferential treatment unless the Congress should find extenuating circumstances in his case. At the outset Mr. Merritt gained the impression that his case was being handled by maritime or naval authorities. His repeated unsuccessful attempts to secure action on his case by means of letters, and his final appeal to the Los Angeles Bar Association demonstrate that he did not rest on his rights. In the light of these facts the committee is of the opinion that this bill merits favorable consideration, and that the facts of the case are sufficient to justify a waiver of the statutory time limits so that Mr. Merritt's case may be presented to the Bureau of Employees' Compensation for a determination on its merits.

The committee, after consideration of the facts hereinabove set forth and as contained in the report of the Department of Labor, which is attached hereto and made a part hereof, agrees with the conclusions reached by the House as to this legislation. The committee is of the opinion that this is a proper claim to be considered on its merits by the Bureau of Employees' Compensation, with the restriction set forth in the amendment to the bill that, in the event there is a determination favorable to the claimant by the Bureau of Employees' Compensation, no benefits shall accrue to him as a result thereof prior to the enactment of this act except for hospital and medical expenses actually incurred. The committee, therefore, recommends that the bill, H. R. 1202, as amended, be considered favorably.

UNITED STATES DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, July 15, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR CONGRESSMAN REED: This is in further reply to your recent request for my comments on H. R. 8742, a bill for the relief of Robert H. Merritt.

The bill proposes to waive the time limitations of the Federal Employees' Compensation Act (39 Stat. 742, as amended) in favor of Robert H. Merritt with respect to the filing of notice of injury and claim for compensation.

The records of the Bureau of Employees Compensation of the Department show that Mr. Merritt did not file a notice of injury of a claim for compensation with the Bureau until March 17, 1952, approximately 9 years after his disability is asserted to have occurred. Since the claim was not made within the maximum statutory time limit of 5 years, it was rejected.

The records in Mr. Merritt's case show that he was a former trainee (apprentice seaman) at the United States Maritime Service Training Station at Avalon, Calif. He is seeking benefits under the Federal Employees' Compensation Act for continuous disability, described as thrombophlebitis, which followed an

appendectomy performed on September 11, 1943. The claim contains no allegation that his disability is connected with an injury which arose in the performance of his duty.

Unless the Congress should find extenuating circumstances which justify waiving the time limitations in this case, I would not favor enactment of a proposal which would single out from a group of persons similarly situated a particular person for preferential treatment. In any event, I would not approve of a bill in the form in which H. R. 8742 is drafted to allow retrospective as well as prospective benefits. The usual pattern of private relief bills drafted for the purpose of waiving time limitations of the compensation act confines relief to benefits accruing after the bill is enacted.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Yours very truly,

JAMES P. MITCHELL,
Secretary of Labor.

MARCH 22, 1954.

Subject: Merritt, Robert H., Disability Claim of

To: Mr. Arthur H. Tryon, Executive Director, Veterans' Service Center, Los Angeles, Calif.

Subject resides at 1040 West 35th Street, Los Angeles, and at present is confined to the Methodist Hospital, 2826 South Hope Street, Los Angeles. He is 31 years of age, born March 30, 1923, at Two Harbors, Mich. He is married but unable to work at his trade as a precision scraper because of his physical condition for which he is making claim. His support comes jointly from his wife and his mother, both of whom operate boardinghouses.

Merritt is presently confined in the hospital where he underwent surgery for a skin graft on his leg as a result of thrombophlebitis, chronic, resulting from disability while employed by the United States Maritime Commission at the United States Maritime Training Station, Avalon, Calif., in September 1943. (See exhibit 1.) His present doctor is Dr. Harold P. Totten, 8467 South Van Ness Avenue, Los Angeles, and his surgeon is Dr. Donal Barker of the staff at Methodist Hospital.

Summary: In September 1943 subject was operated on by an appendectomy at the base hospital of the United States Maritime Commission by a Dr. Yocum of the United States Public Health Service. As subject developed thrombophlebitis, as a result of the operation, he was given a medical discharge from service with the Commission. At the time of discharge he signed papers that were prepared by the officers at the hospital for disability claim against the Commission. A witness to this transaction was Thomas Keane. (See exhibit No. 2.)

After the spring of 1944, subject, having heard nothing from the United States Maritime Commission concerning his claim, wrote several letters to the Commission and had his friend, Thomas Keane, also write concerning the claim. (See exhibit No. 1).

Continued efforts by the subject to secure acknowledgment of his letters or to receive assistance availing him nothing (see exhibit No. 1) he finally went to an attorney, Mr. Augustus Mack, Jr., 900 Wilshire Boulevard, Los Angeles, Calif. This attorney, impressed by the merits of the subject and his case agreed to assist without fee.

Subject's attorney wrote two letters (exhibit Nos. 3 and 4) to the Bureau of Employees' Compensation in Washington, D. C. outlining the merits of the case and received an answer from the Assistant Deputy Commissioner, Bureau of Employees' Compensation, San Francisco, Calif., stating that the claim was not allowed because it was not filed within the time limitations for such claims, and also due to the fact that the Employees' Compensation Act covered only injuries received in service (See exhibit No. 5).)

Findings: 1. That to the best of the knowledge and belief of the subject, the regulations for filing of a claim for disability was accomplished within the time limitation prescribed by law under the Employees' Compensation Act.

2. That the possibility exists that an appendectomy with resulting thrombophlebitis may occur as a result of strain or injury from service with the United States Maritime Commission.

JOHN T. ALSTROM, Jr.,
Special Representative.

EXHIBIT No. 1

UNITED STATES DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION
Case No. X-719887

In the matter of the claim for compensation under the Federal Employees' Compensation Act of Robert Hazelton Merritt, Claimant; Employed by, U. S. Maritime Commission (U. S. Maritime Training Station, Avalon, California)

ADDITIONAL NARRATIVE STATEMENT OF CLAIMANT ROBERT HAZELTON MERRITT, AND CLAIM

ROBERT HAZELTON MERRITT, claimant herein, makes this additional narrative statement and claim in connection with his pending case and states that:

Claimant was injured and disabled in September 1943, while employed by the U. S. Maritime Commission at the U. S. Maritime Training Station, Avalon, California. Claimant had an appendectomy which was performed in September 1943, at the Base Hospital at Avalon, California, with resulting thrombophlebitis.

Claimant was 20 years of age at the time, in September 1943, having been born March 30, 1923, and claimant became 21 years of age on March 30, 1944. Claimant is presently 29 years of age and lives at 326 West 28th Street, Los Angeles 7, California.

Claimant was in the Base Hospital at Avalon for approximately three months after the appendectomy in September 1943, and thereafter was in bed continuously at home in Los Angeles for approximately one and one-half years thereafter as a result of his disability. After the stretch of approximately one and one-half years in bed at home in Los Angeles, claimant was up and down spasmodically, and worked as a welder during such intervals as the condition of his left leg permitted. Claimant has also worked, when able, as a machine tool rebuilder.

Since July 1951, claimant has had four major operations upon his left leg and body resulting from the condition of his left leg, the doctor in charge of the surgery being Harold P. Totten, M. D., 8467 South Van Ness Avenue, Inglewood, California. The original of Dr. Totten's report of August 13, 1952, is attached to the original of this document, and copies thereof are attached to the copies of this document. Since July of 1951, claimant has not worked at any occupation, and has been unable to work but feels somewhat better at this time, although there is constant pain in his left leg and a large, running, open ulcer on the inside of his left ankle. This ulcer is very painful and has been open and running for approximately five years past.

When claimant was in the Base Hospital at Avalon in the fall of 1943 after his operation, some Naval or Merchant Marine officers—claimant does not remember precisely at this time—came and talked to him and filled out some papers and had him sign them, stating that such papers were for his case, and that his case would have proper attention for disability and medical benefits. Claimant does not at this time remember the precise nature of the papers that he signed at the request of the officers, but is positive that the officers informed him that such papers were in connection with his case and for disability and medical benefits from the U. S. Merchant Marine. Claimant assumed that such papers were sent to the U. S. Merchant Marine or to the U. S. Maritime Commission.

Claimant heard nothing in this particular during the remainder of his stay in the Base Hospital at Avalon, and some months later during his convalescence at home in the spring of 1944, the precise date being unknown to claimant, he wrote a letter to the U. S. Maritime Commission at Washington, D. C., in his own handwriting about his case, and his claim, and when he would receive benefits. This letter was mailed for claimant by Thomas Keane, a friend of his who had been a trainee also at the same time at Avalon, and whom claimant had met while in the Base Hospital. Claimant did not keep a copy of this letter. Claimant then wrote two more letters, to his recollection, within the next several months, that is, by June or July of 1944, to the U. S. Maritime Commission at Washington, D. C., in the same vein, such letters being handwritten and claimant making no copies. Thomas Keane also wrote a letter for claimant in 1944 inquiring about the claim of claimant, but never heard anything in reply; and claimant will procure a statement from Thomas Keane about what he did in this particular and send it on to the Bureau of Employees' Compensation just as soon as possible.

Claimant further wrote a letter about his case to a Congressman from the Los Angeles area, but does not remember the name of such Congressman, and does not have a copy of the letter, such letter being handwritten. This letter was written in the summer of 1944, and affiant never received any reply.

Claimant wrote again to the U. S. Maritime Commission at Washington, D. C., about his case in 1946, the precise date being unknown to him and such letter being in his handwriting, and never had any reply. Claimant also, when he was able to be up and get out of the house to some extent, tried to inquire around Los Angeles about his case, but ran up against a "blind alley" in every direction. Claimant went to the Federal Building at Temple and North Spring Streets, Los Angeles, for the purpose, but found nothing there. This was in 1946 or 1947. Claimant tried to find an office of the U. S. Merchant Marine in Los Angeles that handled disability cases during the same time, but was unable to find any. Claimant then wrote again to the U. S. Maritime Commission due to continued disability and severe pain and trouble with his left leg in February 1952, and received a reply dated February 19, 1952, from H. J. Tiedemann, Rear Admiral, USMS, Commandant of the United States Maritime Service, to the effect that claimant was a beneficiary under the U. S. Employees' Compensation Act of September 7, 1916, as amended, and sent to claimant certain claim blanks for completion and return to the Bureau of Employees' Compensation, Washington 25, D. C. Claimant next heard from the United States Department of Labor, Bureau of Employees' Compensation, Washington 25, D. C., under date of March 25, 1952.

Claimant had at no time since September 1943 been represented by, nor had any assistance whatever from, an attorney at law or any person having knowledge of procedure or the law in a case of this kind until claimant went to the Los Angeles Bar Association, Los Angeles, California, and was referred under their Lawyers' Reference Service to Augustus F. Mack, Jr., Esq., of the law firm of Hoag and Mack, 510 So. Spring Street, Los Angeles 13, California, on June 17, 1952. At that time claimant consulted Mr. Mack and was informed by Mr. Mack that it appeared to him that claimant had made a timely filing of his claim under all the circumstances, and that Mr. Mack would interest himself in claimant's case and write to the Bureau of Employees' Compensation; and Mr. Mack did thereafter write to the Bureau of Employees' Compensation fully in the matter of claimant's case under date of June 20, 1952.

Claimant is a man who went through grammar school and three years of high school, and that consituted his entire academic education. Immediately upon leaving high school, claimant went to work as a welder at Buehler Tank & Welding Company, 5000 Pacific Boulevard, Huntington Park, California, and worked continuously for such concern as a welder eleven months, on the night shift. Then claimant enlisted in the U. S. Merchant Marine as a trainee, and it was during such time, in September 1943, that the appendectomy occurred at the Base Hospital at Avalon, California, and the resulting disability continuously ever since.

Claimant has employed as his attorneys in this matter Hoag and Mack, 510 South Spring Street, Los Angeles 13, California, subject to the law and regulations applicable under the U. S. Employees' Compensation Act relating to representation of claimants and approval of claims for legal and other services. Hoag and Mack have accepted the representation of claimant in this case on such basis, and when the case is concluded, or at a proper stage for the purpose, the fee of Hoag and Mack for representation of claimant in this case will be submitted to the Bureau of Employees' Compensation for approval pursuant to the law and applicable regulations. All further communications, correspondence, and the like in this case may be directed to claimant's attorneys henceforth.

Wherefore, claimant Robert Hazelton Merritt respectfully requests that his case be considered on the merits as having been timely filed, and that an appropriate award for disability be made and a rating established, if necessary, and further, that appropriate award by made for past medical expense necessarily incurred and any and all reasonable medical attention and expense in the future by claimant through the years since his release from the Base Hospital at Avalon; and that the Bureau of Employees' Compensation grant and afford to claimant all proper and reasonable relief to which he is entitled under the law.

Dated: August 15, 1942.

ROBERT HAZELTON MERRITT.

HOAG AND MACK, AUGUSTUS F. MACK, Jr.,
Attorneys for Claimant.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert Hazelton Merritt, being first duly sworn, deposes and says: that he is the Claimant in the above-entitled case; that he has read the foregoing Additional Narrative Statement of Claimant Robert Hazelton Merritt, and Claim, and

knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ROBERT HAZELTON MERRITT.

Subscribed and sworn to before me this 15th day of August 1952.

A. RUSSELL,
Notary Public in and for the County of Los Angeles, State of California.

EXHIBIT A

INGLEWOOD, CALIF., *August 13, 1952.*

Re Mr. Robert Merritt, 1040 West 35 Street, Los Angeles 7, Calif.

To Whom It May Concern:

Mr. Robert Merritt has been under my care for a painful postphlebitic ulcer since July 23, 1951. At the present time there has been subjective improvement relative to the pain and the causalgia element of the postphlebitic syndrome has been eliminated but the ulceration is still present. The patient is to be given a trial of part-time work but an estimation as to the full time when work will be permitted cannot be made at this time.

Very truly yours,

H. P. TOTTEN, M. D.

EXHIBIT NO. 2

U. S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION

Case No. X-719887

In the Matter of the Claim for Compensation Under the Federal Employees' Compensation Act of Robert Hazelton Merritt, Claimant; Employed by U. S. Maritime Commission (U. S. Maritime Training Station, Avalon, California)

AFFIDAVIT OF THOMAS KEAN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

THOMAS KEAN, being first duly sworn, says that:

He is a citizen of the United States and lives at 2685 Orchard Avenue, Los Angeles 7, California. He is 27 years of age.

Affiant knows Robert Hazelton Merritt, the claimant, and has known him since September 1943, when affiant met claimant for the first time in the Base Hospital at Avalon, California. At the time, affiant was in the hospital for an appendectomy and was enrolled in the United States Maritime Training Station at Avalon, California, as a trainee, as was claimant. When affiant left the hospital after a routine recovery, claimant Robert Hazelton Merritt was still there, and affiant used to go to visit him until claimant left the hospital after about a three months' stay there.

On one occasion when affiant visited claimant in the hospital, the exact date being unknown to claimant at this time, but he reasonably believes that it was in the month of October or November 1943, affiant came to the side of the bed where claimant lay and at the time two or three officers in uniform—either Naval officers or Merchant Marine officers—were just leaving, and he heard them say to claimant that they would take care of sending the papers in for him about his disability.

After claimant was released from the Base Hospital at Avalon, I went to see him at his home in Los Angeles, where he was bedridden. He lived with his parents at 326 W. 28th Street, Los Angeles. My home was also in Los Angeles at the time, and still is.

On several occasions when I went to see claimant at his home in Los Angeles, he said that he had heard nothing from Washington about his disability, and some time in the spring of 1944, the exact date not being recalled at this time, when affiant was visiting claimant, the subject was discussed and claimant wrote a letter in longhand addressed to the U. S. Merchant Marine in Washington, D. C. about his injury and inquiring about what was going to be done, and stating that

he had not heard from them in any way about it. Affiant took this letter and personally mailed it for claimant.

Later in 1944 during the summer, the exact time being unknown to affiant, affiant talked to claimant at his home on another visit, and when he was informed that claimant had not heard anything at all, affiant then wrote a letter in his own handwriting to the United States Merchant Marine at Washington, D. C. stating, in effect, the very sad plight of claimant, and that claimant had not heard in any way from them about his claim and his disability. Affiant personally mailed such letter, and never heard in any way in answer thereto.

Affiant has kept up his acquaintance with claimant through the years since September 1943, and states of his own knowledge and observation that claimant has a serious, crippling injury which seems to bother claimant a good deal and to cause him constant pain, and affiant knows of his own knowledge and observation that claimant has actually been disabled and unable to work much of the time since September 1943, and is presently unable to work, although claimant has informed affiant that he is going to try to do some part time work, if possible.

THOMAS KEAN.

Subscribed and sworn to before me this 18th day of August 1952.

A. RUSSELL,
Notary Public in and for Said County and State.

EXHIBIT NO. 3

LAW OFFICES OF HOAG AND MACK,
Los Angeles 13, August 20, 1952.

Airmail: Re Case No. X-719887, Robert Hazelton Merritt, Claimant.

BUREAU OF EMPLOYEES' COMPENSATION,
Washington 25, D. C.

(Attention: C. D. Calbeck, Special Examiner).

GENTLEMEN: Mr. Calbeck's letter of August 12, 1952, crossed my airmail letter to you of August 15, 1952, enclosing triplicate originals of additional narrative statement of claimant, Robert Hazelton Merritt, and claim. As explained in my letter, severe pressure of work prevented me from sending you further data in the case until that time.

I now enclose triplicate originals of affidavit of Thomas Kean. This affidavit was obtained on Monday, August 18, 1952, and clearly supports Mr. Merritt's statement that he made a timely claim.

I trust that under the circumstances the matter will be further considered and that Mr. Calbeck's letter of August 12, 1952, is not a final rejection. I agree with his letter of August 12, 1952, when he states that "Question of notice is not under consideration." However, it is clear to me that a timely claim was made, first by the naval or merchant marine officers for Mr. Merritt in the fall of 1943 as referred to in paragraph 4 of the Additional Narrative Statement and then again by claimant in the spring of 1944 as stated in the same paragraph 4, and also by his friend Thomas Kean as therein stated and as corroborated by the affidavit of Thomas Kean.

It is my belief that a claim need not be in any special form and that it does not need to be artfully drawn in a case of this type. I know that is the rule in claims arising under the Longshoremen's and Harbor Workers' Compensation Act and believe that the same rule should obtain here. During World War II I ran the office of Lillick, Geary & McHose at Los Angeles and virtually all our work there was admiralty and maritime law work. I handled many claims there among other things for the War Shipping Administration and the various operators operating under GAA agreements. In many instances there was no record of claims having been made, but I was satisfied that letters—usually poorly worded and poorly written—had on many occasions been sent in and had never been recorded or noted down anywhere so that there was a record of them. Nevertheless, in all those cases good claims had been made.

You get pretty much down to a question of believing in a situation of this kind. Here you have a 20-year-old boy at the time of his illness of poor background and education. He relied on the officers who said they were sending in a claim for him about his disability. When he did not hear anything for several months—and being at the time in bed at home and racked by pain—he wrote himself to the only place he knew, the United States Maritime Commission or the United States

Merchant Marine in Washington, D. C. It was wartime, there was a great shortage of help in the various offices and it is small wonder to me that he never heard anything at all.

This young man's claim is meritorious and should be accepted. My personal impression—and I am not a physician—is that in due course of time he will be losing his left leg.

Mr. Merritt is not looking for sympathy or anything to which he is not entitled. He is not looking for "something for nothing." In my opinion he is entitled to receive what he is asking for.

Very truly yours,

———— ————.

EXHIBIT No. 4

LAW OFFICES OF HOAG & MACK,
Los Angeles 13, June 20, 1952.

Re Case No. X-719887—Robert H. Merritt, claimant—employed by United States Maritime Commission, United States Maritime Training Station, Avalon, Calif.

BUREAU OF EMPLOYEES' COMPENSATION,
Washington 25, D. C.

GENTLEMEN: Mr. Robert H. Merritt came in to talk to me about his case the day before yesterday and after hearing his story and examining such papers as he had pertaining to the matter, I became quite interested and told him I would look into it in his behalf.

He showed me a copy of your Compensation Order, Rejection of Claim, dated June 10, 1952, signed by C. D. Calbeck, special examiner, rejecting this claim for the following reason:

"That the claim is barred by the time limitation provisions of the act in respect to the giving of notice of injury and filing of claim for compensation."

The act involved is the United States Employees' Compensation Act of September 7, 1916, as amended, as I understand it.

With the copy of the order of June 10, 1952, you sent a mimeographed form stating that Mr. Merritt had the privilege of presenting to the Bureau any further evidence he might wish to have considered in connection with his case and that otherwise he had the right to request review of the decision by appeal to the Employees' Compensation Board of Appeals.

The situation as I see it merits further consideration by you. In my opinion a hearing should be held here in Los Angeles so that this young man could tell his story in full and also present at least one witness who can substantiate certain important facts. He has never had a hearing of any kind, has never talked to anybody in the Bureau of Employees' Compensation, and has never been represented by an attorney. The only evidence that he can determine upon which your order of June 10, 1952, is based concerns the facts briefly stated in his letter to you of March 29, 1952, and such medical evidence as you obtained from your own records on his case.

When he had the appendectomy in September 1943 and resulting thrombophlebitis, Mr. Merritt was 20 years of age. He did not become 21 years of age until March 30, 1944. He was in your hospital at Avalon for approximately 3 months and for about 1½ years thereafter was in bed at home. After that he was up and down and in the last 12 months he has had 4 major operations resulting from the condition of his left leg. In the years 1946–50 the trouble diminished somewhat and he worked when he could but he was off and on. He has tried to work in his trade as a machine-tool rebuilder but simply cannot stand on his feet for more than 2 or 3 hours at best. The picture is one of a very, very serious and crippling injury, one which will be with him all his life.

Now on the question of notice and of filing a claim, Mr. Merritt states that when he was in the hospital at Avalon in the fall of 1943, some naval or merchant marine officers came and filled out some papers and had him sign them, stating that they would send them in and that his case would have proper attention for disability and medical benefits. Mr. Merritt is substantiated in this by Mr. Thomas Keane, who was a trainee also there at the time. Mr. Merritt assumed—and rightly so, I think—that the papers were sent in to the Maritime Commission because that is the only thing he knew about. When he did not hear anything and some months later during his convalescence at home, he wrote to the Maritime Commission several times in 1944 and heard nothing, the purport of his letters being to make inquiry about his claim. Mr. Thomas Keane also wrote a

letter for Mr. Merritt in 1944 making claim on behalf of Mr. Merritt but he never heard anything. All of these inquiries were directed, as I understand it, to the Maritime Commission or the United States Maritime Service.

When Mr. Merritt was able to be up some and get out of the house he tried to make such inquiry as he could around Los Angeles but stated that he ran up against a "blind alley" virtually in every direction. He stated he tried to find an office of the Bureau of Employees' Compensation here in Los Angeles without success.

This young man is now 29 years of age and in September of this year will have completed 9 years of disability and suffering, the disability only being interrupted by such times as he was able to get out and work despite the very serious and crippling condition of his left leg. In my opinion he made claim or claim was made in his behalf within 1 year after his injury and also within 5 years and the very serious nature of his case, the circumstance that he was under 21 years of age at the time, and the further circumstance that he has never talked to anybody of your bureau nor has he ever had the benefit of advice of counsel until now warrant a hearing in the proper sense where this boy can be seen, his story and that of his witnesses heard, and the case properly considered. Please accordingly consider this letter as such a request for a hearing and the presentation of full evidence in the case. I am not very familiar with your rules but I do believe you are fair and a fair and full hearing is all that is needed, in my opinion, to show the merit of this young man's claim.

I may say that I was raised in the school of thought where one should never expect "something for nothing." I would not be attempting to assist Mr. Merritt in any way whatever if I thought his was such a type of case. I am convinced on the contrary that it is not and that his case is one of real merit and should have the consideration it deserves and a correspondent award. Mr. Merritt was referred to me for assistance by the Los Angeles Bar Association and that is how after hearing his story I am in the picture in his behalf.

May I hear from you?

Very truly yours,

EXHIBIT NO. 5

UNITED STATES DEPARTMENT OF LABOR,
BUREAU OF EMPLOYEES' COMPENSATION,
San Francisco 2, Calif., November 19, 1952.

HOAG and MACK,
Attorneys at Law,
510 South Spring Street,
Los Angeles 13, Calif.

(Attention Mr. Augustus F. Mack, Jr.)

GENTLEMEN: Receipt is acknowledged of your letters of August 15 and August 20, 1952, together with additional information which you submitted in the case of Robert H. Merritt, who alleges he incurred a disabling condition during September 1943.

The additional information has been the subject of careful consideration in the light of the entire record of this case. It is regretted that a modification of the Bureau's formal action of June 10, 1952, denying benefits for the reason that the time limitations are not met in this case, is not indicated.

Mr. Merritt's case was not considered on its merits, inasmuch as it was determined in the first place that the claim was barred under the provisions of the Compensation Act relating to the time within which notice of injury and claim for compensation must be filed. It should be noted, however, that although no decision has been rendered as to the merits of the claim, it does not appear that Mr. Merritt would be entitled to benefits even if the time limitations had been complied with, because the Compensation Act provides for benefits only on account of injury sustained while in the performance of duty or disease proximately caused by the employment. It does not appear that the claimant's appendicitis and phlebitis were caused by either injury in the performance of duty or the conditions of his employment.

It is very much regretted that the Bureau is unable to extend benefits under the Compensation Act to Mr. Merritt.

A copy of this letter is being forwarded to the claimant for his information.

Very truly yours,

JOHN J. NEWMAN,
Assistant Deputy Commissioner.

SUPPLEMENTAL CONFIDENTIAL REPORT

MARCH 22, 1954.

Subject: Merritt, Robert H.
To: Mr. Arthur H. Tryon, Executive Director, Veterans Service Center, 300 West Third Street, Los Angeles 13, Calif.

To supplement my previous report on subject it is my opinion that the Bureau of Employees' Compensation will not reverse their decision on this case. However, this is the type of case that merits attention as the fault in delay in filing a claim against the Government lies not with the subject, but with the personnel of an organization that faced the problem of untrained personnel and confusion that occurred in many governmental bureaus during wartime.

Subject has been under almost constant medical treatment since his medical discharge from the United States Maritime Commission, and all at his own expense. He was not expected to live when he received an appendectomy at the United States Maritime Commission Hospital at Avalon in 1943, and when he did, the thromboplebitis settled in his left leg. He has been able to work only 2 months out of the year since that time and is now in danger of becoming a charity patient because he has exhausted all the funds that his wife and mother have been able to provide.

The question as to whether this is an injury in line of duty I do not believe can be reconciled. Subject was working as much as 18 hours a day on his job, was a strong and healthy young man, was admitted to the maritime service on a basis of physical examination showing good health; so it would seem that there is reasonable doubt that his illness was not in the line of duty and was due to physical strain caused by his job.

There is supported testimony in the original report of investigation that subject, to the best of his knowledge and belief, did file a claim within the time limit required, and did follow up such claim to the best of his ability without results. Even if he had failed to file it would show a dereliction of duty on the part of the commanding officer of the station in that he was not required to file such a claim or at a minimum, that he be advised of his rights to do so. If the responsibility of command had been carried out properly, subject would not have found himself in this difficulty.

Subject appears to be a high-type of American youth who is not asking for something for nothing. He has been suffering both mental and physical anguish since 1943 with a condition that may yet result in amputation. His mother and his wife, both of whom conduct boarding houses, are at the end of their financial ability to help him further with medical expenses. He was in the service of the United States when his illness occurred, and if he had been a soldier, sailor, or marine, he would be entitled to compensation.

JOHN T. ALSTROM, Jr.,
Special Representative.

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Calendar No. 483

84TH CONGRESS
1st Session

SENATE

REPORT
No. 479

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

DAVID R. CLICK

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1400]

The Committee on the Judiciary, to which was referred the bill (H. R. 1400) for the relief of David R. Click, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 4, after the name "Click" insert "of Woodville, Alabama,".

PURPOSE

The purpose of the proposed legislation is to waive sections 15 to 20, inclusive, of the Federal Employees' Compensation Act to permit David R. Click, of Woodville, Ala., to file a claim for compensation with the Bureau of Employees' Compensation for injuries alleged to have been sustained in 1943 while an employee of the War Department at the Huntsville Arsenal, Huntsville, Ala., if the claim is filed within 6 months of the date of enactment of this act.

STATEMENT

Information before the committee discloses that Mr. Click was employed by the War Department at the Huntsville Arsenal, Huntsville, Ala., during the years of 1942–43. In 1946 Mr. Click sought to file a claim for compensation in connection with a disability incurred while he was at work on October 23, 1943. Mr. Click was of the opinion that his claim for compensation had been correctly filed. Subsequent inquiries disclosed that no claim was, in fact, on file. When this fact was established the claimant filed another claim as of July 23, 1953. The Bureau of Employees' Compensation rejected Mr. Click's claim for compensation for the reason that it was not

filed within the maximum period of 5 years provided by the act. No investigation or determination was made as to the merits of his claim.

In an affidavit, which is made a part of this report, Mr. Click sets out the circumstances why his claim was not timely filed within the 5-year statute of limitations. His first effort was made within the 5-year period but was incorrectly filed. His second application, made in 1953, was late and, therefore, denied. The claimant points out that he had been led to believe that his first application, filed in 1946, would be forwarded to the Bureau of Employees' Compensation in Washington but somehow his application went astray and was never properly filed.

This is a case where the claimant thought he had properly filed an application within the statutory period but which, it subsequently developed, had not been properly filed and inasmuch as this claimant has never had his case decided on the merits, this bill would only permit the Bureau of Employees' Compensation to consider his claim on the merits, notwithstanding that the statutory period for consideration of such a claim has elapsed. The committee has, on a number of occasions in the past, favorably considered bills of a similar nature. Attention is invited to private laws 78 and 903 of the 83d Congress.

For the reasons set forth above the committee, therefore, recommends favorable consideration of this bill, H. R. 1400, as amended.

Attached hereto and made a part hereof is the report of the Department of Labor and other evidentiary data relating to this claim.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, March 7, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in further response to your request for my comments on H. R. 1400, a bill for the relief of David R. Click.

This bill proposes to waive the time limitations of sections 15 to 20 of the Federal Employees' Compensation Act (39 Stat. 742), as amended, in favor of David R. Click. The bill would authorize and direct consideration of a claim for compensation under other provisions of that act if duly filed by Mr. Click within 6 months after enactment of this bill. The claim is based on disabilities allegedly caused by Mr. Click's employment at Huntsville Arsenal, Huntsville, Ala., during 1942 and 1943. The bill does not contain the usual bar of retroactive benefits.

The files of the Bureau of Employees' Compensation contain a claim filed by Mr. Click on July 23, 1953, in which he alleged disability, beginning October 28, 1944, due to a knee injury incurred while at work on October 23, 1943. In later communications, the claimant alleged that he is also disabled by chronic bronchitis due to his employment.

This claim was rejected for the reason that it was not filed within the maximum period of 5 years provided by the act. No investigation or determination was made as to the merits of the claim.

Since the effect of H. R. 1400 would be to discriminate in favor of Mr. Click against other claimants in similar situations, I would oppose this bill unless the Congress finds that there are other circumstances justifying the time limitation waiver in this case.

Even if such circumstances should be found, I believe the bill should be revised to correct the matters referred to in the second paragraph of this letter. Proposed language to that end, as a substitute for H. R. 1400, is enclosed.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL,
Secretary of Labor.

STATE OF ALABAMA,
Marshall County, ss:

Before me, Salemma Rigsby, notary public, State at large, Alabama, personally appeared David R. Click who, being by me first duly sworn, deposes and says:

That he is the David R. Click mentioned in a certain bill now pending before the Congress of the United States waiving the right to file claim before the Civil Service Commission of the United States; that he appeared at the Civil Service office at Huntsville, Ala., in 1946 asking for a blank to file claim and which was filled out by a girl in the office and left there with her to be forwarded to the office in Washington, D. C.; that affiant thought the claim had been filed; that it was for a disability pension, or medical aid, or both; that in 1951 he got Judge R. H. Williams of Guntersville, Ala., to write either 2 or 3 letters to the Civil Service Commission in Washington, D. C., and sometime during the year 1951, the exact data he does not know, a reply was sent back and in 1952 he filled out another claim, filed it, got X-rays and sent this all to the Civil Service Office in Washington 25, D. C. This claim was denied in September 1953 or about that time on the part of the Board because it had not been filed within the time required by the acts of Congress but he was never able to locate the claim he filed in 1946. The reason he did not file it in Washington was he was led to believe by the girl who filled out the application for him that she was sending the claim to the office in Washington, D. C. The claim evidently got misplaced or mislaid and he makes affidavit that the facts stated in this affidavit are true.

DAVID R. CLICK,
Route No. 1, Woodville, Ala.

Sworn to and subscribed before me on this the 25th day of May 1954.

[SEAL]

SALEMMA RIGSBY,
Notary Public, State at Large, Alabama.

Calendar No. 484

84TH CONGRESS, 1st Session } SENATE { REPORT No. 480

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

EWING CHOAT

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1401]

The Committee on the Judiciary, to which was referred the bill (H. R. 1401) for the relief of Ewing Choat, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 2, strike the words "in excess of 10 per centum thereof."

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $5,000 to Ewing Choat, of Guntersville, Ala., in full settlement of his claims against the United States on account of personal injuries, resulting in permanent partial disability sustained by him on October 25, 1945, while he was working on an honor prison farm as inmate of the United States penitentiary at Atlanta, Ga.

STATEMENT

On October 27, 1945, claimant was serving a sentence at the United States Penitentiary, Atlanta, Ga., and was assigned to work on the farm operated in connection with that institution. On that date he was severely injured when a large log rolled from a truck on which he was riding, knocking him to the ground and rolling over his right arm, crushing and fracturing the bones of his right elbow. Although he was hospitalized immediately, and the broken bones surgically removed from the elbow, it appears that the claimant has suffered an 85 percent total permanent disability in the use of his right arm. Claimant's ability to seek employment has been reduced since he cannot perform any job which requires the use of his right arm.

Recently he has been employed as a night watchman, but for the most part is dependent upon his 23 year old son, a tenant farmer with a wife and child to support.

The report of the Department of Justice submitted in connection with a similar bill introduced in a prior Congress states:

> The record further reveals that the institution employee responsible for supervision of the loading operation neglected to secure the logs in place by chains or ropes. Moreover there is nothing to indicate that he required blocks or wedges appropriately placed to prevent the logs from rolling off the truck. Thus it appears that there was negligence on the part of the supervisor and that claimant's injury was not the result of any fault on his part. In response to all inquiry from claimant concerning compensation for his injury, the Bureau of Prisons, under date of July 23, 1946, advised him that there was no existing statutory authority for such compensation and that recourse to private relief legislation appeared to be indicated on the circumstances.

The committee feels that the claimant is entitled to reimbursement for the loss of the use of his right arm, and since there is no method by which he can receive such reimbursement other than by private legislation, the committee recommends favorable consideration of H. R. 1401.

Attached to this report is the report of the Department of Justice referred to earlier, an affidavit executed by the claimant, and an affidavit executed by a doctor engaged in the practice of medicine in Guntersville, Ala.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, October 29, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 1701) for the relief of Ewing Choat.

The bill would provide for payment of the sum of $5,000 to Ewing Choat, Guntersville, Ala., in full settlement of all claims against the United States on account of personal injuries, resulting in permanent partial disability, sustained by him on October 27, 1945, while working on an honor prison farm as an inmate of the United States penitentiary at Atlanta, Ga.

From the information contained in the files of the Department of Justice, it appears that claimant was received at the United States penitentiary, Atlanta, Ga., on February 24, 1945, to serve a sentence of 18 months. On October 27, 1945, while assigned to work on the institutional farm, he was injured when a large log rolled from a truck on which he was riding, knocking him to the ground and rolling over his right arm, crushing and fracturing the bones of his right elbow. He was hospitalized immediately, and the broken bones were surgically removed from the elbow. He remained in the hospital from that date until his conditional release some 5 months later, at which time there was a stiffness or ankylosis of his right elbow fixed at 120 degrees, and a disability of 75 percent in the use of the right arm which then was believed to be permanent.

The record further reveals that the institution employee responsible for supervision of the loading operation neglected to secure the logs in place by chains or ropes. Moreover, there is nothing to indicate that he required blocks or wedges appropriately placed to prevent the logs from rolling off the truck. Thus it appears that there was negligence on the part of the supervisor and that claimant's injury was not the result of any fault on his part. In response to an inquiry from claimant concerning compensation for his injury, the Bureau of Prisons, under date of July 23, 1946, advised him that there was no existing statutory authority for such compensation and that recourse to private relief legislation appeared to be indicated in the circumstances.

In view of the foregoing facts, the Department of Justice has no objection to the enactment of the bill.

The Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

ROBERT W. MINOR,
Acting Deputy Attorney General.

STATE OF ALABAMA,
Marshall County:

Before me, Ross L. Cornelius, a notary public in and for said State and county, personally appeared Ewing Choat, who being by me duly sworn doth depose and say:

My name is Ewing Choat. I am 46 years of age and a resident citizen of Marshall County, Ala. I was married to Jennie Patterson, of Marshall County, Ala., but we are now divorced. We have 1 son, James Doyle Choat, 23 years of age, with whom I am now living.

On February 13, 1945, I was sentenced to 18 months in the United States penitentiary for possession and transporting of 3 gallons and 3 quarts of non-tax-paid whisky by Judge Clarence Mullins in the Federal court at Gadsden, Ala. On February 13, 1945, after receiving the sentence, I was placed in the Calhoun County jail, Anniston, Ala., where I remained until February 24, 1945, when I was transferred to the United States penitentiary in Atlanta, Ga. The first 30 days in Atlanta were spent in quarantine; however, during that period I was given the duty of an orderly. After the quarantine period was over and I had been classified I was placed on farm No. 2, assigned to a team and tractor detail. I remained on this detail until October 27, 1945, when my arm was crushed.

My arm injury occurred on October 27, 1945, between 4 and 5 o'clock in the afternoon. Mr. Turner, assistant farm manager of honor farm No. 2, assigned Charles Pate, from Mississippi, Horace Crisp, from Birmingham, a fellow by the name of King, from Macon, Ga., Sam Collins, and me to the task of loading three logs, which had been cut on the grounds between the barn office and the dormitory and hauling them to the slaughterhouse. We hauled 1 of the 3 logs and returned for the other 2. We had loaded the other two logs on the flatbed of a truck and had almost reached the slaughterhouse when the logs rolled from the truck, throwing me to the ground. One of the logs fell on my right arm, crushing the bones in and around the elbow. The logs had not been chained to the truck because we had no chains. Charles Pate was driving the truck but I don't think the accident was his fault. After the accident occurred I was taken to the farm superintendent, Harry Wisman's, office at the barn. Mr. Wisman called Dr. Hess, who requested that I be transferred to the prison hospital, where I remained from October 27, 1945, until March 21, 1946, when I was let out on conditional release. Dr. Hess, the head doctor in the prison hospital, told me some bones had been removed from my arm and that the arm would always be weak and crooked. Dr. Hess advised me to never try to lift anything heavy or to strain it.

I have very little strength left in my right arm as a result of this injury. I cannot straighten the arm and have very little use of it. I cannot perform any sort of job which requires the use of my right arm. Since my injury, I have not been able to do anything but light work. Since my injury, I have worked a short time as a night watchman and I have helped with light farmwork. This has been all of the work I have been able to do and I am mostly dependent on my 23-year-old son, who is a tenant farmer, for support. He, also, has a wife and child to support and I am greatly in need of assistance.

EWING CHOAT.

Sworn to and subscribed before me this 24th day of May 1954.

[SEAL] ROSS L. CORNELIUS, *Notary Public.*

STATE OF ALABAMA,
Marshall County:

Before me, Ross L. Cornelius, a notary public in and for said State and county, personally appeared Edward W. Venning, who being by me duly sworn doth depose and say:

My name is Edward W. Venning, of Guntersville, Ala. I am a duly licensed physician engaged in the practice of medicine in Guntersville, Ala., where I have practiced for the past 15 years. I have conducted an examination of Ewing Choat in my office on June 7, 1954. My findings were as follows:

Diagnosis: Previous fracture of the elbow of the right arm resulting in almost complete 90-degree fixation. There is approximately a maximum 15-degree flexion only.

Prognosis: Permanent fixation as stated above resulting in 85-percent total permanent disability as patient is right handed.

EDWARD W. VENNING.

Sworn to and subscribed before me this 18th day of June 1954.

Ross L. CORNELIUS, *Notary Public.*

Calendar No. 485

84TH CONGRESS, 1st Session } SENATE { REPORT No. 481

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

H. W. ROBINSON & CO.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1409]

The Committee on the Judiciary, to which was referred the bill (H. R. 1409) for the relief of H. W. Robinson & Co., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 4 and 5, strike out the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize payment of the sum of $823.13 to H. W. Robinson & Co., of New York, N. Y., in full settlement of all their claims against the United States for reimbursement of excessive customs duties which were paid by such company as a result of a clerical error by customs authorities in failing to note that certain woven fabrics imported by such company had been immediately exported.

STATEMENT

The sum stated in the bill represents estimated customs duties deposited in accordance with section 505 of the Tariff Act of 1930 (19 U. S. C. 1505) to cover a case of fabrics imported through the port of New York under consumption entry No. 703501 dated July 14, 1949. After importation, but before release from customs custody, the merchandise involved was exported from the United States under immediate exportation entry No. 14012 dated November 16, 1949, and a notation to this effect was made on the face of the consumption

entry, so that in the liquidation of the consumption entry the estimated duty deposited would be refunded in accordance with section 558 (a) (1) of the Tariff Act (19 U. S. C. 1558 (a) (1)).

In the liquidation of consumption entry No. 703501 on April 13, 1950, the notation on the face of the entry that the merchandise had been exported was overlooked as the result of a clerical error, and the entry was liquidated with an assessment of customs duty as deposited.

Under section 514 of the Tariff Act (19 U. S. C. 1514), all decisions of the collector of customs in the liquidation of an entry become final and conclusive upon all persons, including the United States and any officer thereof, unless a protest in writing is filed with the collector within 60 days after the liquidation. Under section 520 (c) (1) (19 U. S. C. 1520 (c) (1)), the Secretary of the Treasury may authorize a collector of customs to reliquidate an entry to correct a clerical error in the liquidation of an entry discovered within one year after the date of entry. In the instant case, the importer did not file a timely protest pursuant to section 514 of the Tariff Act, *supra;* nor was the clerical error discovered within the time limitation of section 520 (c) (1) of the Tariff Act, *supra.*

In view of the fact that the statutory periods set forth in sections 514 and 520 (c) (1) of the Tariff Act, in which administrative relief might have been granted, had expired, a refund of the customs duty paid could not, as a matter of law, be made by the Customs Service.

The Treasury Department, in reporting on a similar bill of the 83d Congress, concluded that inasmuch as the assessment of the customs duties was caused as a result of a clerical error on the part of the customs authorities, that Department would interpose no objection to relief for this claimant.

The committee is of the opinion that the claimant should be reimbursed for the excessive customs duties which were paid by it, which occurred as a result of a customs error and, accordingly, recommends favorable consideration of this bill, H. R. 1409, as amended.

Attached hereto and made a part hereof is the report of the Treasury Department submitted in connection with a similar bill of the 83d Congress.

TREASURY DEPARTMENT,
Washington 25, June 16, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 26, 1954, requesting a statement of this Department's views on H. R. 7093, for the relief of H. W. Robinson & Co.

The proposed legislation provides for the payment of the sum of $823.13 to H. W. Robinson & Co., Inc., of New York, N. Y., for reimbursement of excessive customs duty which was paid by such company as a result of a clerical error in failing to note that certain woven fabrics imported under New York consumption entry No. 703501 has been immediately exported, and which could not be refunded because of the failure on the part of such company timely to apply, pursuant to law, for administrative relief.

Since the assessment of the customs duties was caused as a result of a clerical error on the part of customs authorities, the Department would interpose no objection to the enactment of H. R. 7093.

There is enclosed a memorandum of the detailed facts in the case.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

MEMORANDUM OF FACTS IN THE MATTER OF H. R. 7093

The sum of $823.13, which H. R. 7093 would pay to H. W. Robinson & Co., Inc., of New York, N. Y., represents estimated customs duty deposited in accordance with section 505 of the Tariff Act of 1930 (19 U. S. C. 1505) to cover a case of fabrics imported through the port of New York under consumption entry No. 703501 dated July 14, 1949. After importation, but before release from customs custody, the merchandise involved was exported from the United States under immediate exportation entry No. 14012 dated November 16, 1949, and a notation to this effect was made on the face of the consumption entry, so that in the liquidation of the consumption entry the estimated duty deposited would be refunded in accordance with section 558 (a) (1) of the tariff act (19 U. S. C. 1558 (a) (1)).

In the liquidation of consumption entry No. 703501 on April 13, 1950, the notation on the face of the entry that the merchandise had been exported was overlooked as the result of a clerical error, and the entry was liquidated with an assessment of customs duty as deposited.

Under section 514 of the tariff act (19 U. S. C. 1514), all decisions of the collector of customs in the liquidation of an entry become final and conclusive upon all persons, including the United States and any officer thereof, unless a protest in writing is filed with the collector within 60 days after the liquidation. Under section 520 (c) (1) (19 U. S. C. 1520 (c) (1)), the Secretary of the Treasury may authorize a collector of customs to reliquidate an entry to correct a clerical error in the liquidation of an entry discovered within 1 year after the date of entry. In the instant case, the importer did not file a timely protest pursuant to section 514 of the Tariff Act, supra; nor was the clerical error discovered within the time limitation of section 520 (c) (1) of the tariff act, supra.

If a protest had been filed in the instant case within the prescribed statutory period of 60 days as set forth in section 514, supra, the collector of customs would undoubtedly have reliquidated the consumption entry and refunded the estimated duty deposited. If the clerical error involved had been discovered within 1 year after the date of entry as required by section 520 (c) (1), supra, this Bureau would have authorized the collector of New York to reliquidate the entry and refund the estimated duty deposited. However, since the statutory periods set forth in sections 514 and 520 (c) (1), supra, in which administrative relief might have been granted, had expired, a refund of the customs duty paid could not, as a matter of law, be made by the customs service.

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Calendar No. 486

84TH CONGRESS, 1st Session | SENATE | REPORT No. 482

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

CONSTANTINE NITSAS

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1640]

The Committee on the Judiciary, to which was referred the bill (H. R. 1640) for the relief of Constantine Nitsas, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 11, strike out "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize the Secretary of the Treasury to pay the sum of $500 to Constantine Nitsas, of Canton, Ohio, in full settlement of all his claims against the United States as reimbursement for bond posted for Anastasia Korinis (nee Xanthaki) in December of 1947.

STATEMENT

Records of the Department of Justice disclose that Anastasia Xanthaki was admitted to the United States on December 30, 1947, as the alien fiance of a veteran of the United States Armed Forces under authority of the act of June 29, 1946 (50 App. U. S. C. 1851). Under authority of section 4 of that act a $500 bond was deposited as a guaranty that the alien would either marry the claimant or depart from the United States within 3 months. Instead of marrying this claimant, Miss Xanthaki married Louis Korinis, a nonveteran citizen,

on March 19, 1948. She did not apply for an extension of her temporary admission.

On January 29, 1952, the bond was declared breached and voluntary payment was made by the Nathaniel Surety Corp. on April 2, 1952. Deportation proceedings were begun on August 6, 1948. On October 2, 1951, the alien was granted permanent residence retroactively to date of admission under authority of section 19 (c) of the Immigration Act of 1917, as amended (8 U. S. C. 155).

The Department of Justice, in reporting on an identical bill in the 83d Congress, states that in view of the circumstances of this case it interposes no objection to the enactment of the bill.

The committee is of the opinion that the claimant should be reimbursed for the amount of the bond posted, inasmuch as the United States did not suffer any financial damages as a result of the failure of the alien to depart within the time specified, due to the fact that the alien was granted permanent residence retroactively to the date of her admission to this country, and prior to the date of the breach of the bond.

The committee, therefore, recommends favorable consideration of H. R. 1640, as amended.

Attached hereto and made a part hereof is a report from the Department of Justice submitted in connection with a similar bill of the 83d Congress and other evidentiary data relating to this claim.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 18, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 5586) for the relief of Constantine Nitsas.

The bill would authorize and direct the Secretary of the Treasury to pay the sum of $500 to Constantine Nitsas in full settlement of all claims against the United States as reimbursement for bond posted for Anastasia Korinis (nee Xanthaki) in November or December 1947.

Anastasia Xanthaki was admitted to the United States on December 30, 1947, as the alien fiance of a veteran of the United States Armed Forces under authority of the act of June 29, 1946 (50 App. U. S. C. 1851). Under authority of section 4 of that act a $500 bond was posted as a guaranty that the alien would either marry the veteran or depart from the United States within 3 months. Instead of marrying the veteran, Miss Xanthaki married Louis Korinis, a nonveteran citizen, on March 19, 1948. She did not apply for an extension of her temporary admission.

On January 29, 1952, the bond was declared breached and voluntary payment was made by the National Surety Corp. on April 2, 1952. Deportation proceedings were begun on August 6, 1948. On October 2, 1951, the alien was granted permanent residence retroactively to date of admission under authority of section 19 (c) of the Immigration Act of 1917, as amended (8 U. S. C. 155).

In view of the circumstances of this case, the Department of Justice finds no objection to enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
New York, N. Y., March 19, 1952.

Mr. AARON H. SCHWARTZ,
Attorney at Law, New York, N. Y.

DEAR SIR: Reference is had to your letter of March 7, 1952, concerning the bond in the sum of $500 executed by the National Surety Corp., in behalf of Anastasia Xanthaki.

Please be advised that under the terms of the bond the alien was required to marry Constantine Nitsas within 3 months of the date of her arrival or to depart from the United States within the same period of time. Her failure to perform either one of these actions resulted in a breaching of the bond.

Inasmuch as the order in this case was entered by the Commissioner of Immigration and Naturalization, there is no jurisdiction in this district to reconsider the case.

Very truly yours,

EDW. J. SHAUGNESSY,
District Director, New York District.
BY WALTER WHEATLEY,
Acting Chief, Noncompulsory Hearing Section.

NATIONAL SURETY CORP.,
New York, N. Y., March 6, 1952.

Subject: Bond 1035335, $500. Anastasia Xanthaki.
Mr. CONSTANTINE NITSAS,
Canton, Ohio.

DEAR MR. NITSAS: Attached hereto please find copy of letter dated as of February 26, 1952, addressed to the 110 John Street, New York City, office of National Surety Corp. by the United States Department of Justice, Immigration and Naturalization Service, 70 Columbus Avenue, New York City, which is self-explanatory, and which you will note declares the above named bond breached, making demand on us for the full amount of the bond of $500.

Also attached is a copy of the order of the central office signed by Eleanor Enright, Acting Assistant Commissioner of the Adjudications Division, which orders the bond breached.

We are, therefore, making payment to the United States Department of Justice, Immigration and Naturalization Service, in the full amount of our bond of $500, and reimbursing ourselves out of the collateral on deposit with us.

A copy of the Immigration Service's correspondence is also being sent to your attorney, Aaron H. Schwartz, of 565 Fifth Avenue, New York, N. Y.

Very truly yours,

A. T. LANE, *Attorney.*

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
New York, N. Y., February 26, 1951.

Alien: Anastasia Xanthaki.
Bond executed on December 15, 1947.
Amount of bond: $500.

NATIONAL SURETY CORP.,
New York, N. Y.

DEAR SIR: In accordance with order of our central office, the subject bond executed by you has been declared breached. Copy of the order is attached for your information.

It is, therefore, requested that you mail to this office certified check payable to the Treasurer of the United States in the full amount of the bond, within 15 days from the date you receive this letter. Bill IN 143355 is attached.

Very truly yours,

EDW. J. SHAUGHNESSY,
District Director, New York District.
By B. M. QUINN,
Chief, Fiscal Section.

File: A–6861979. New York (0300–210550)
In re Anastasia Stawros (Stavros) Korinis or Tasia (nee Xanthakou) or Xanthos
In behalf of applicant: Aaron H. Schwartz, Esq., New York, N. Y.
Application: Cancellation of bond

This record relates to a 36-year-old married female, native and citizen of Greece, who was admitted to the United States at the port of New York on December 30, 1947, as a temporary visitor for 3 months under the act of June 29, 1946, as amended (Public Law 126, 80th Cong.), under bond.

The subject failed to marry the fiance to whom she was destined. On March 19, 1948, she married one Louis Korinis, a naturalized citizen of the United States but not an honorably discharged veteran of World War II. She has never been granted an extension of her temporary stay in this country and has resided here since her original entry on December 30, 1947. Warrant proceedings were instituted on August 6, 1948. Deportation of the alien was suspended in accordance with provisions of section 19 (c) (2) of the Immigration Act of 1917, as amended, the warrant of arrest canceled, and a record of her lawful entry for permanent residence created as of December 30, 1947, the date of her last arrival in the United States.

The act of June 29, 1946, as amended, provides that in the event the marriage of an alien admitted under its terms does not occur, the alien shall be required to depart from the United States. The bond is subject to forfeiture in the event the fiance becomes deportable, which has occurred in this case. Therefore, it should be declared breached as of March 29, 1948.

It is ordered that the $500 departure bond posted on behalf of the above-named subject be declared breached as of March 29, 1948.

ELEANOR ENRIGHT,
Acting Assistant Commissioner, Adjudications Division.

UNIV. OF MICH

Calendar No. 487

84TH CONGRESS, 1st Session | SENATE | REPORT No. 483

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

FREDERICK F. GASKIN

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1692]

The Committee on the Judiciary, to which was referred the bill (H. R. 1692) for the relief of Frederick F. Gaskin, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 11, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay $500 to Frederick F. Gaskin, Route 88, Rodgers Avenue (Alexton), Harrisburg, Pa., in full settlement of all claims against the United States as reimbursement for bond posted for Maria Grazia Stoudt (nee Russo) on October 6, 1947.

STATEMENT

The history of this proposed legislation is set forth in detail in the report of the Department of Justice dated June 18, 1954, which is attached hereto and made a part of this report. It will be noted that the Department of Justice has no objection to this legislation.

After careful consideration, the committee recommends favorable consideration of the bill, as amended.

The report of the Department of Justice is as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 18, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 7362) for the relief of Frederick F. Gaskin.

The bill would authorize and direct the Secretary of the Treasury to pay the sum of $500 to Frederick F. Gaskin "in full settlement of all claims against the United States as reimbursement for bond posted for Maria Grazia Stoudt (nee Russo) on October 6, 1947."

Maria Grazia Russo was admitted to the United States on October 6, 1947, as the alien fiance of a veteran of the United States Armed Forces under authority of the act of June 29, 1946 (50 App. U. S. C. 1851). Under authority of section 4 of that act a $500 bond was posted as a guaranty that the alien would either marry the veteran or depart from the United States within 3 months. Instead of marrying the claimant, Miss Russo married Donald F. Stoudt, a United States citizen and veteran, on December 27, 1948.

On December 28, 1948, the bond was declared breached and voluntary payment was made by the Aetna Casualty & Surety Co., on March 18, 1949. In the meantime deportation proceedings had begun. On August 4, 1953, the alien was granted permanent residence retroactively to date of admission under authority of section 19 (c) of the Immigration Act of 1917, as amended (8 U. S. C. 155).

In view of the circumstances of this case, the Department of Justice finds no objection to enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

DECEMBER 16, 1953.

WALTER M. MUMMA,
16th District, Pennsylvania.

DEAR SIR: The following are the facts you requested in regard to the Russo case, in your letter dated December 10, 1953.

I entered the service February 14, 1945, and was discharged November 13, 1951, at Middletown Air Force Base, Middletown, Pa.

When I was discharged I had to date 6 years, 7 months, 27 days of service. I was discharged with an honorable discharge.

I met Miss Russo during 1946 and 1947 through a buddy who was going with her girl friend at the time.

We were stationed at Capodichino Air Base, Naples, Italy. Miss Russo's home was in Secondigliano, which was the next town to Capodichino where our base was located, outside Naples, Italy.

I went with Miss Russo for a year before I left for the States to send for her.

During this time everything was fine between us, I was a Protestant, and she a Catholic, she said it didn't matter to her she would be married in a Lutheran Church if I wanted it.

When she came to the States I met her at the boat in New York City, she had to stay on Ellis Island 2 days while I arranged for her bond of $500.

Then I met her as she docked from Ellis Island and took her to the New York bus terminal to go to my hometown which was Allentown, Pa.

While she sat in the waiting room I called my buddy's mother, in Allentown where she was to stay until I married her as I no longer had a home, since my mother died and my dad was living in a boardinghouse.

After the call, Miss Russo and I got the bus for my hometown, Allentown, Pa.

From the moment we got on the bus things changed, she treated me like a stranger, she wouldn't talk or anything, just sat there.

After 2 weeks of this in Allentown, I consulted my pastor at the church, he knew of a Protestant pastor's wife who had been Catholic and also spoke Italian.

We went there and after 2 hours she confided in my pastor and the other pastor's wife.

She flatly refused to agree to anything she had in Italy. She said she wouldn't marry Protestant, and also wouldn't have any children.

We then went back to Allentown, I tried for weeks to get her to compromise but she wouldn't budge an inch, in fact she wouldn't even talk at all.

It was then that fate, took a hand and shipped me overseas again this time to Hawaii and Japan.

Shortly after I had left my buddy Donald Stoudt came home from Germany, his mother felt sorry for Miss Russo and 4 months later shoved him into marrying her.

He married her 1 day before she was to be deported.

It was plain to see she married him rather than be deported, as she married in a Lutheran church, 1 day before she was to be deported, and also had a baby during the first year of marriage.

And in so doing, she done exactly what the swore she wouldn't do under any circumstance.

She was in the country on a 3-month visa but it was a year or more till she faced deportation, by that time my buddy had come home, she saw her chance to escape deportation and took it.

I also found out later that I wasn't the first guy she tried to get to the States through, only the one ahead of me didn't send for her as I did.

She had even lied to me in regard to her age, she had told me when I met her in Italy that she was 18 going on 19, but the Immigration Department in New York informed me she was 17 just ready to turn 18 when she arrived in the States.

Still I forgave her for that and tried to do everything I could for her, I bought her clothes and everything else as she didn't have a thing to her name except what she had on.

After buying her clothes paying for her passage and everything she turns right around as if she didn't know me.

One other thing she stated, she said she would marry me but that would be the end of it, she wouldn't go any further; then I really knew she just used me to get to the States, figuring I'd be a sucker and marry her since I had fallen for her in Italy.

Her parents knew nothing of her dirty plans as I had been to them her father said he'd kill her, when I wrote what had happened and her mother pleaded with me to work something out and marry her.

I'd have to really be off my rocker to marry her after that runaround.

She's now living at home with her husband's parents, brothers, and sisters, on North Sherman Street, Allentown, or was the last I heard.

My buddy's father works on the Allentown paper and after I left they painted a story making me the louse, the title read as follows: GI Woos and Strands Italian Girl.

I wrote the paper after I saw the article which my father had sent me, but naturally it done no good since Mr. Stoudt worked there.

I think that about covers everything you wanted if there's anything else you need let me know.

Sincerely yours,

FREDERICK F. GASKIN.

Calendar No. 488

84TH CONGRESS, 1st Session } SENATE { REPORT No. 484

JUN 16 1955
LAW LIBRARY

UTICA BREWING CO.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1747]

The Committee on the Judiciary, to which was referred the bill (H. R. 1747) for the relief of the Utica Brewing Co., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, lines 9 and 10, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay Utica Brewing Co., of Utica, N. Y., $900, representing the amount paid by said company to the Internal Revenue Service for 4 fermented malt liquor stamps of the 25-barrel denomination at $225 each, which stamps were lost and have never been found.

STATEMENT

The report of the Treasury Department, which is hereto attached and made a part hereof, discloses the following:

The records of the Internal Revenue Service show that on November 25, 1952, an employee of the Utica Brewing Co. went to the office of the district director of internal revenue, Utica, N. Y., and purchased beer-tax stamps, in various denominations, and valued at $28,215, for use in taxpaying beer in the brewery premises; that these stamps were in sheets, including 6 sheets of 25-barrel stamps, each sheet containing 4 stamps; that after counting the stamps, the brewery employee folded

the sheets, tied them together with a string, and left the internal revenue office; that he walked to his car and drove to the brewery premises; and that upon arriving at the brewery office he discovered that all of the sheets of the 25-barrel stamps were missing. The employee then returned to the vicinity of the post office building, in which the internal revenue office was located, and found in the streets 5 of the 6 missing sheets of 25-barrel stamps but did not then or subsequently find the sixth missing sheet which contained four 25-barrel stamps. The Utica Brewing Co. subsequently advertised in the Utica papers for the missing stamps but without result. The stamps have not since been recovered.

The Treasury Department states in its report:

> In general the Treasury Department is of the opinion that all taxpayers similarly situated should receive comparable treatment under the laws generally applicable. Thus, the Department has consistently taken the position that section 3304 of the Internal Revenue Code, which authorizes the Commissioner to make allowance for or redeem internal-revenue stamps under certain circumstances, does not permit the making of an allowance for, or the redemption of, such stamps that have been lost or stolen.
>
> In addition, where internal-revenue stamps are concerned, such a rule prevent the possibility of fraud on the Government. There is seldom any satisfactory method of establishing whether a particular taxpayer is in rightful possession of any particular revenue stamp since most of them are, in effect, negotiable. For example, if a person claimed that certain of the special stamps used for the payment of the tax on tobacco and snuff had been lost or stolen, it is quite possible for them to be used by such person, or his transferee, in fraud of the Government since the very nature of the stamps precludes adequate checking at the time of use.
>
> This aspect, however, does not appear to exist in the instant case. Fermented malt liquor stamps of the 25-barrel denomination are generally used to pay the tax on fermented malt liquor transferred by pipeline from the brewery to the brewery bottling house. Under the accounting system of the Internal Revenue Service the brewer is required to report the purchase of such stamps from the district director and when they are used to pay the tax they are required to be canceled by the brewer and surrendered to an internal-revenue inspector with a report of the meter reading covering the transfer of the liquor. The brewer's stamp account is audited monthly and the purchase and use of the stamps verified. It is, therefore, doubtful whether stamps of such denomination, unlike stamps used for taxpaying barrels and fractional parts of barrels of fermented malt liquor, could be used by the Utica Brewing Co. or any other brewer in fraud of the revenue without detection.
>
> However, this Department is not aware as to whether special relief in the instant case would be discriminatory. It is possible that other taxpayers in the same situation, either in the past or the future, knowing of the Service's position with respect to lost or stolen stamps, have decided or will decide that they are bound by the general law, and no claim was or will be made. Therefore, enactment of the proposed bill might result in discrimination. The Congress may wish to consider these circumstances in deciding whether the instant case merits special relief.

The committee is in accord with the views expressed by the Treasury Department and is impressed by the statement that it is doubtful whether stamps of such denomination, unlike stamps used for taxpaying barrels and fractional parts of barrels of fermented malt liquor, could be used by the Utica Brewing Co. or any other brewer in fraud of the revenue without detection. As long as this situation appears, the committee is of the opinion that the brewing company should be reimbursed for its loss. It is to be understood that this action on the part of the committee is not to be considered as a precedent for other cases, but that, in all respects, each case should be considered on its merits, without relying upon the action of the committee in this instance. The purpose of this position is to avoid possible discrimination and yet at the same time afford relief in cases where the facts themselves speak for equity to be done.

TREASURY DEPARTMENT,
Washington, June 15, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of February 12, 1953, requesting the views of this Department with respect to H. R. 2912, entitled "A bill for the relief of the Utica Brewing Co."

The bill would authorize and direct the Secretary of the Treasury to pay "to the Utica Brewing Co., of Utica, N. Y., out of any money in the Treasury not otherwise appropriated, the sum of $900, representing the amount paid by said company to the Internal Revenue Bureau for 4 fermented malt liquor stamps of the 25-barrel denomination at $225 each," which stamps were lost between the office of the district director of internal revenue and the office of said brewing company. The bill would require the Utica Brewing Co. to file with the Treasury Department a bond in the penal sum of $900 to indemnify and save harmless the United States from any loss on account of said stamps and provides that not more than 10 percent of the amount appropriated may be paid to any agent or attorney on account of services rendered in connection with the claim.

The records of the Internal Revenue Service show that on November 25, 1952, an employee of the Utica Brewing Co. went to the office of the district director of internal revenue, Utica, N. Y., and purchased beer-tax stamps, in various denominations, and valued at $28,215, for use in taxpaying beer in the brewery premises; that these stamps were in sheets, including 6 sheets of 25-barrel stamps, each sheet containing 4 stamps; that after counting the stamps, the brewery employee folded the sheets, tied them together with a string, and left the internal revenue office; that he walked to his car and drove to the brewery premises; and that upon arriving at the brewery office he discovered that all of the sheets of the 25-barrel stamps were missing. The employee then returned to the vicinity of the post office building, in which the internal revenue office was located, and found in the streets 5 of the 6 missing sheets of 25-barrel stamps but did not then or subsequently find the sixth missing sheet which contained four 25-barrel stamps. The Utica Brewing Co. subsequently advertised in the Utica papers for the missing stamps but without result. The stamps have not since been recovered.

In general the Treasury Department is of the opinion that all taxpayers similarly situated should receive comparable treatment under the laws generally applicable. Thus, the Department has consistently taken the position that section 3304 of the Internal Revenue Code, which authorizes the Commissioner to make allowance for or redeem internal revenue stamps under certain circumstances, does not permit the making of an allowance for, or the redemption of, such stamps that have been lost or stolen.

In addition, where internal-revenue stamps are concerned, such a rule prevents the possibility of fraud on the Government. There is seldom any satisfactory method of establishing whether a particular taxpayer is in rightful possession of any particular revenue stamp since most of them are, in effect, negotiable. For example, if a person claimed that certain of the special stamps used for the payment of the tax on tobacco and snuff had been lost or stolen, it is quite possible for them to be used by such person, or his transferee, in fraud of the Government since the very nature of the stamps precludes adequate checking at the time of use.

This aspect, however, does not appear to exist in the instant case. Fermented malt liquor stamps of the 25-barrel denomination are generally used to pay the tax on fermented malt liquor transferred by pipeline from the brewery to the brewery bottling house. Under the accounting system of the Internal Revenue Service the brewer is required to report the purchase of such stamps from the district director and when they are used to pay the tax they are required to be canceled by the brewer and surrendered to an internal-revenue inspector with a report of the meter reading covering the transfer of the liquor. The brewer's stamp account is audited monthly and the purchase and use of the stamps verified. It is, therefore, doubtful whether stamps of such denomination, unlike stamps used for taxpaying barrels and fractional parts of barrels of fermented malt liquor, could be used by the Utica Brewing Co. or any other brewer in fraud of the revenue without detection.

However, this Department is not aware as to whether special relief in the instant case would be discriminatory. It is possible that other taxpayers in the same situation, either in the past or the future, knowing of the Service's position with respect to lost or stolen stamps, have decided or will decide that they are bound by the

general law, and no claim was or will be made. Therefore, enactment of the proposed bill might result in discrimination. The Congress may wish to consider these circumstances in deciding whether the instant case merits special relief.

Technically, if the bill is considered for enactment, references in the bill to the "Internal Revenue Bureau" and to "Collector of Internal Revenue" should be revised to "Internal Revenue Service" and "District Director of Internal Revenue," respectively, to conform to the reorganization of the Internal Revenue Service.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

M. B. FOLSOM,
Acting Secretary of the Treasury.

STATE OF NEW YORK,
County of Oneida, City of Utica, ss:

August A. Palmieri, being first duly sworn, deposes and states that he is employed as shipping clerk by the Utica Brewing Co., Inc. of Utica, N. Y., 610–615 Jay Street, Utica, N. Y., having held such position since 1940.

That, on November 25, 1952, at about 3:30 p. m., he did visit the United States Internal Revenue office located in the post office bulding in Utica, N. Y., for the purpose of purchasing beer-tax stamps on behalf of the Utica Brewing Co. Inc. of Utica, N. Y., and that he did hand to Mr. Leonard Cinquanta, cashier, check No. A–3971 (certified) drawn on the Oneida National Bank & Trust Co., of Utica, N. Y., to the order of director of internal revenue in the amount of $28,215. He also furnished Mr. Cinquanta form 7, purchaser's No. 1044, dated November 25, 1952, "Order for Stamps—Fermented Malt Liquor" for 24/25's, 88/5's, 110/1's, 3,900/2's, 80/4's, and 120/8's.

That, all of the above-mentioned stamps were received by the deponent from Mr. Cinquanta and that he recalls having counted these stamps along with Mr. Cinquanta and he is therefore certain that all these stamps were received by him.

That, upon leaving the post office building with the stamps folded in the middle and tied with a string, he proceeded to his auto which was parked about 250 feet east on Broad Street. He then returned to the brewery and upon arriving there noticed that there were no 25-barrel stamps in the center of the bundle, whereupon he immediately returned to the place where the car was parked and after diligently searching the entire neighborhood was able to find only 5 of the 6 sheets of stamps which had become lost. The deponent further states that he was accompanied on this search trip by one Donald Newell, an employee of the brewery.

That, the search was then continued by the deponent accompanied by Mr. Frank Costello, company auditor, and that an area of approximately 2 square blocks was thoroughly searched with no trace found of the missing four 25-barrel stamps. The wind was blowing in a southwesterly direction at the time and therefore the search was centered more to the south of the post office building. A police officer, George Alam, also assisted in the search.

That, an advertisement was placed in the Utica Observer-Dispatch and the Utica Daily Press, Thursday and Friday editions. However, to the moment, this has produced no results.

The deponent further states that he returned to the scene several times later on to look further for the stamps, but was unable to locate them.

AUGUST A. PALMIERI.

Signed and sworn to before me this 22d day of June 1954.

[SEAL] FRANK T. COSTELLO,
Notary Public in the State of New York.

My commission expires March 30, 1956.

Calendar No. 489

84TH CONGRESS, 1st Session } SENATE { REPORT No. 485

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

MRS. DIANA P. KITTRELL

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2456]

The Committee on the Judiciary, to which was referred the bill (H. R. 2456) for the relief of Mrs. Diana P. Kittrell, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, lines 10 and 11, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $500 to Mrs. Diana P. Kittrell, of 1434 Wieland Avenue, Chicago, Ill., in full settlement of all claims against the United States as reimbursement for bond posted for her natural niece and adopted daughter, Denesse Jennifer Brown (now Diana Patricia Kittrell).

STATEMENT

The history of this proposed legislation is set forth in detail in the report of the Department of Justice, dated June 30, 1954. It will be noted that the Department has no objection to the enactment of the bill.

After careful consideration, the committee concurs in the recommendation of the Department of Justice, and recommends favorable consideration of the bill, as amended.

The report of the Department of Justice is as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 30, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 8371) for the relief of Mrs. Diana P. Kittrell.

The bill would authorize and direct the Secretary of the Treasury to pay the sum of $500 to Mrs. Kittrell "in full settlement of all claims against the United States as reimbursement for bond posted for her natural niece and adopted daughter, Denesse Jennifer Brown.

Denesse Jennifer Brown, at the age of 1½ years, was admitted to the United States on April 15, 1948, as a visitor for pleasure pursuant to section 3 (2) of the Immigration Act of 1924 (8 U. S. C. 203). A $500 bond was furnished by the National Surety Corp., as sole obligor, to guarantee maintenance of status and departure from the United States on or before October 1948. On written consent of the obligor the alien's stay was subsequently extended until February 14, 1949. Request for a further extension, however, was denied on the grounds of the imminent adoption of the child by her aunt, Mrs. Diana P. Kittrell, a citizen of the United States.

The child was adopted on March 16, 1949, and an application for suspension of deportation was thereafter filed. Deportation was suspended and the adjustment of the alien's status to that of a permanent resident, retroactive to date of entry, appears imminent.[1]

On January 21, 1952, the district director at Miami, Fla., declared the bond breached and on June 25, 1952, the National Surety Corp. made voluntary payment of the bond.

In view of the special circumstances of this case, the Department of Justice finds no objection to enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

MAY 19, 1953.

In re Denesse Jennifer Brown (alien 5 years of age), Immigration and Naturalization Service, Chicago, File No. 0900-39427, Miami, Fla., No. 0606-34767, National Surety Corp., Atlanta, Ga., Bond No. 1074340.

Congressman EDGAR A. JONAS,
New House Office Building, Washington, D. C.

DEAR CONGRESSMAN JONAS: I am writing to you to ask your assistance in getting a special bill passed to have the Treasury Department return $500 which was deposited by the Immigration and Naturalization Service. My client, Diana P. Kittrell, who is the natural aunt and adopted mother of Denesse Jennifer Brown, 5 years of age, posted $500 at the request of the Immigration and Naturalization Service.

The child was a British subject and a native of Jamaica, West Indies. On April 13, 1948, she was brought here as a visitor and before 6 months had elapsed the aunt asked for an extension which was granted, making the expiration date April 13, 1949. On March 16, 1949, my client adopted her niece in the circuit court of Cook County.

The Florida office stated that the expiration date was February 14, 1949, a difference of 60 days. She received a letter from C. C. Davis on March 2, 1949, in which she was informed that when the adoption was accomplished she might make application for adjustment of status by completing the enclosed forms in triplicate. This she did.

While she was following directions from the Chicago office of Immigration and Naturalization Service there was much correspondence between the Florida Service and National Surety Corp. She was served with summons but the minor alien was not served, and she was told to report every 30 days which she did. She was not running away or hiding from the Government. She and her husband own their own home at 1434 Wieland Avenue, Chicago.

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[1] Suspension of deportation approved by Congress in S. Con. Res. 34, agreed to July 29, 1953.

We wrote to the Miami, Fla., office of the Immigration and Naturalization Service, asking that we be given a hearing in Chicago on their claim to the forfeited bond. We appealed to the Commission of Immigration and Naturalization Service, Department of Justice, Washington, D. C., June 2, 1952. Said appeal was answered January 28, 1953, by A. C. Devaney, Assistant Commissioner, Inspections and Examinations Division (File A–7128828 E. & D.) denying appeal. I feel that the office failed to note the discrepancy in the date for leaving this country or the statements that the child's status could be adjusted after the adoption. I believe that my client should have had a hearing in Chicago and evidence presented on the forfeited bond. She was entitled to her day in court.

Since the request for the hearing in Chicago was disregarded and the bond was breached without my client having the opportunity of being heard and since the appeal was denied and the money from the forfeited bond delivered to the United States Treasury, I am appealing to you to present a special bill to Congress for the return of the $500. We have been advised that once the money has been deposited in the United States Treasury, the only way to get it back is by special bill presented to Congress.

Anything you can do in this matter would be greatly appreciated not only by my client but by me.

Yours truly,

IRENE V. MCCORMICK.

○

Calendar No. 490

84TH CONGRESS, 1st Session } SENATE { REPORT No. 486

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

ALBERT VINCENT, SR.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2529]

The Committee on the Judiciary, to which was referred the bill, (H. R. 2529) for the relief of Albert Vincent, Sr., having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 2, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of this legislation, as amended, is to pay Albert Vincent, Sr., St. Martinsville, La., the sum of $336 as regular subsistence pay for the period, September 26, 1949 through January 17, 1950, during which period claimant was in attendance in the adult academic education program through the Iberia Parish School Board in Louisiana.

STATEMENT

The complete facts available to the committee are set forth in certain correspondence and the report of the Veterans' Administration with reference to H. R. 6033, 83d Congress, 2d session, which are appended to this report. Briefly, a résumé of these facts are as follows:

Albert Vincent, Sr., a veteran of World War II, under the GI bill of rights, regularly attended the adult academic education program in the parish of Iberia, La., between September 26, 1949, and January 17, 1950. These facts are corroborated under oath by Robert E. Johnson, supervisor of the aforesaid adult education program.

In the absence of any irregularities which would bar payment, claimant was entitled to $90 per month or $336 for this period. Under the regulations of the Veterans' Administration, however, a receipt of a formal application by the Veterans' Administration is a prerequisite to such payment.

While Vincent states under oath he signed all forms he was requested to sign, the Veterans' Administration claims it did not receive the formal application as required by the above quoted regulations. Therefore, claimant was never paid for this period, although he did not question the nonpayment of this claim until June 18, 1953.

Several possible explanations were given for the failure of the Veterans' Administration to have received claimant's formal application. At the same time, no evidence is submitted by the Veterans' Administration nor anyone else, stating the claimant was in any way responsible for this error.

The record discloses that Vincent traveled approximately 12 miles per day to and from school, was duly admitted to classes, attended classes on a three-quarter time or 18 hour per week basis, signed all forms presented for his signature. In view of these facts, and after a study of the data which appears below, the committee believes that when a veteran has in good faith tried to comply with the regulations, and has daily presented himself for instruction in the honest belief he was properly enrolled, he should not be denied compensation because the Veterans' Administration is unable to prove it has received no formal application from claimant. Therefore, the committee recommends that the bill, H. R. 2529, as amended, be considered favorably.

Herewith follows the data concerning H. R. 6033, a bill of identical purpose to this proposed legislation which was introduced in the 83d Congress as previously mentioned.

STATE OF LOUISIANA,
Parish of St. Martin:

Albert Vincent, being first duly sworn according to law, on his oath, deposes and says:

"In connection with the bill H. R. 6033, I make the following statements under oath:

"I am a veteran of World War II, my serial number being 38616981. Under the GI bill of rights, I attended the adult academic education program in the parish of Iberia, La., from September 26, 1949, to January 17, 1950, both inclusive, on a three-quarter-time or 18-hour-per-week basis, and in that connection my claim number is 15719689.

"I was duly admitted to attend classes and signed all the forms which I was requested to sign. My address at the time was route 1, box 337, St. Martinville, La., a distance of approximately 6 miles from the school, and I accordingly traveled 12 miles going to and from school, which I regularly attended during said period between September 26, 1949, and January 17, 1950.

"The regular pay scale on a three-quarter-time or 18-hour-per-week basis was $90 per month, or a total of $336 for the period in question.

"For some reason which I cannot account for, I never received payment to which I was and am entitled under the adult academic education program. I notice in the affidavit of Mr. Robert E. Johnson, dated November 23, 1953, and submitted to the House Committee on the Judiciary in connection with the bill introduced in my behalf, he states that the appropriate form 'was possibly misplaced by them' (the Veterans' Administration). Mr. Johnson was supervisor of the adult education program for veterans for the Louisiana State Department of Education, Iberia Parish School Board, New Iberia, La. In any event, I

do not now, and state under oath that I never received payment for the period in question, amounting to $336."

ALBERT VINCENT.

Sworn to and subscribed before me this 7th day of December 1953.

[SEAL] EARL H. WILLIS,
Notary Public.

STATE OF LOUISIANA,
Parish of Iberia:

Before me, the undersigned authority, duly commissioned and qualified within and for the State and parish aforesaid, personally came and appeared, Robert E. Johnson, who, being by me first duly sworn, deposed and said:

"On or about August 1, 1949, I was appointed supervisor of the adult educational program for veterans for the Louisiana State Department of Education, Iberia Parish School Board, New Iberia, La. One Albert Vincent, whose address at that time was route 1, box 337, St. Martinville, La., and whose claim number was 15719689, and whose service serial number was 38616981, commenced training in the adult academic education program on September 26, 1949, at New Iberia, La., in our school here. He attended class from September 26, 1949, through January 17, 1950, on a three-fourths time or 18-hour-per-week basis. He interrupted on January 17, 1950, which was his last day of attendance.

"The official VA records, that is, the form 7–1953 authorizing us to enter him into a course of instruction, bears the effective date of his certificate as March 15, 1950. The copy which we have in our files shows that we reentered him in training April 25, 1950.

"The forms 7–1907c–1 issued by the Veterans' Administration, as well as the form 7–1953, indicates that for some reason he was only officially authorized by the Veterans' Administration to enter training as of April 25, 1950, and that the training time which he put in from September 26, 1949, until January 17, 1950, was never officially approved by the VA, and indicates that he did not receive any subsistence pay whatsoever during this period of time, and during which period of time he would have been entitled to subsistence in the amount of $90 per month had he been approved for training.

"Apparently the situation in regard to his failing to receive a subsistence allowance for the period from September 26, 1949, through January 17, 1950, arose because of the fact that at the time we had been instructed to enter veterans into training by submitting a form 1953a on the veteran, which we evidently did in his case, and which for some reason or other the Veterans' Administration failed to approve, and which required that he subsequently applied for and received a form 1953 which he later did. The result has been that he has failed to receive subsistence for this first period of time during which he was in training. Our records do not show that we have a copy of the form 1953a which was mailed to the Veterans' Administration, so we assume from this that one of several things could have happened. It is possible that the service officer submitted this form 1953a, although we do not think that he did so. A second possibility (we note that during this period of time for which he was not paid subsistence that his claim number was unknown to us) is that this application could have been made, and because of the fact that his claim number was unknown, that it could have failed to have received consideration by the Veterans' Administration, or that it was possibly misplaced by them because of the fact that the claim number was not shown on the application.

"We do not know any more of the facts concerning this training other than what we have shown hereinabove. We are in a position, through our daily classroom records kept by our teachers, of which we have a copy, to state that he was in training on a three-fourths-time basis from September 26, 1949, through January 17, 1950."

ROBERT E. JOHNSON.

Sworn to and subscribed before me, in triplicate originals, at New Iberia, La., this 23d day of November 1953.

[SEAL] LLOYD G. PORTER, JR.,
Notary Public.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., November 6, 1953.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. REED: This has further reference to your request for a report by the Veterans' Administration on H. R. 6033, 83d Congress, a bill for the relief of Albert Vincent, Sr., which provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Albert Vincent, Senior, route 1, box 337, Saint Martinville, Louisiana, the sum of $336, in full sertlement of all claims of said Albert Vincent, Senior, against the United States for regular subsistence pay for the period September 26, 1949. through January 17, 1950, in the adult academic education program through the Iberia Parish School Board in Louisiana: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of the Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The veteran, Albert Vincent, Sr., C-15719689, entered active service in the United States Army on July 12, 1944, and was honorably discharged on January 12, 1946. On March 15, 1950, he applied for education or training benefits under part VIII, Veterans Regulation No. 1 (a), as added by title II of the Servicemen's Readjustment Act of 1944 (58 Stat. 287), as amended. A certificate of eligibility and entitlement was issued to the veteran on April 14, 1950, which was subsequently returned to the Veterans' Administration bearing endorsements by both himself and the educational institution involved that he had commenced training on April 25, 1950, on a three-fourths-time basis. Based upon this certificate an award of education or training benefits was made effective April 25, 1950, including the payment of subsistence allowance to the veteran at the rate of $90 monthly. Effective January 15, 1951, the rate was increased to $120 monthly by reason of the veteran's attendance on a full-time basis. Except for certain interruptions the veteran continued his course of education or training on the full-time basis until April 30, 1951, at which time he voluntarily withdrew.

By letter dated June 18, 1953, addressed to the Veterans' Administration by the veteran's representative, it was indicated that the veteran had engaged in an adult education program through the Iberia Parish, La., School Board from September 26, 1949, through January 17, 1950, on a three-fourths-time basis, and inquiry was made as to the reason the veteran had not received subsistence allowance payments for that period. The Veterans' Administration reply of June 24, 1953, related the fact that the endorsements of both the veteran and the agent of the educational institution on the certificate of eligibility and entitlement indicated the date of entrance upon training to have been April 25, 1950, and further that the law prohibits payment of benefits prior to the date of filing of application for benefits.

Section 6 (a) of the mentioned part VIII provides, among other things, that while enrolled in or pursuing a course under such part VIII, and upon application to the Administrator of Veterans' Affairs, an eligible veteran shall be paid a subsistence allowance. Implementing this statutory provision are Veterans' Administration regulations which provide in part that the receipt of a formal application in the Veterans' Administration is a prerequisite to the determination of eligibility and entitlement to benefits under part VIII; that an informal application may be considered if it is followed promptly by a formal application; that the act of a veteran in enrolling in an approved institution does not, in itself, constitute an informal application since there is no authority whereby the Veterans' Administration may impute to a veteran an intention to become a beneficiary under the statute merely because of his enrollment; and that if a formal application is not presented prior to cessation of a course, benefits shall not be allowed by virtue of such course without regard to any question of the prior existence of an informal application.

Upon receipt of the committee request for a report, full inquiry into the circumstances of the case was made in order to ascertain whether a timely application for education or training benefits could be established as a basis for authorizing payment of the retroactive benefits sought to be provided under the proposed

legislation. This inquiry established that although the veteran had been enrolled in a course of adult education from September 26, 1949, through January 17, 1950, the record of the supervisor of the adult education program in Iberia Parish and of the Iberia Parish service officer, as well as the records of the Veterans' Administration, failed to show that an application for education or training benefits under the mentioned part VIII had been made during the period of that enrollment. Further, there was no evidence which would impute an intention on the part of the veteran during the period in question to avail himself of benefits under the statute.

In support of the view that no formal or informal application for education or training was made by Mr. Vincent prior to March 15, 1950, attention is invited to the fact that he filed an original application on that date (as distinguished from the form pertaining to reentrance in education or training) on which he stated that the course of education or training for which he was applying began on September 26, 1949. In addition, it appears that the educational institution itself did not regard the veteran as a student in the mentioned part VIII program from September 26, 1949, to January 15, 1950, as evidenced by the fact that it has not sought payment from the Veterans' Administration of the cost of tuition and related charges in his case for any period prior to April 25, 1950. In fact, it was not until June 18, 1953, that the veteran himself sought, through his representative, to question the accuracy of the effective date of subsistence allowance payments made to him.

In view of the facts adduced, the award of education or training benefits was properly commenced as of April 25, 1950, under the mentioned law and regulations, and the Veterans' Administration is not authorized to pay retroactive subsistence allowance for the period September 26, 1949, to January 17, 1950. H. R. 6033 proposes to except the case of Mr. Vincent from the application of the governing law and regulations by the payment of the amount of $336, which equals the total amount of subsistence allowance to which the veteran would have been entitled under part VIII during the period in question, had he been qualified to receive such benefit.

The circumstances of the case have been carefully considered and no reason is apparent why it should be singled out for special legislative treatment by authorizing payment to Mr. Vincent of an amount representing retroactive subsistence allowance to which he is not entitled under the general law. To grant legislative relief in this case would be discriminatory against other veterans to whom the payment of retroactive subsistence allowance has been denied under the same or similar circumstances, and might form a precedent for similar relief in other cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

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Calendar No. 491

84TH CONGRESS, 1st Session | SENATE | REPORT No. 487

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

ESTATE OF WILLIAM B. RICE

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2760]

The Committee on the Judiciary, to which was referred the bill (H. R. 2760) for the relief of the estate of William B. Rice, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENTS

On page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Sally Rice, of Rockaway Beach, New York, the sum of $2,000 in full settlement of all her claims against the United States arising out of the failure of the Department of the Army, Class E Allotment Section, to forward premiums to the Pioneer American Insurance Company, Houston, Texas, on a life-insurance policy issued by that company to her son, William B. Rice, RA12296456 (George Rice, Jr.) deceased, prior to the last day of grace as authorized to do so under the law: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Amend the title so as to read:

A bill for the relief of Mrs. Sally Rice.

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize the Secretary of the Treasury to pay the sum of $2,000 to Mrs. Sally Rice, of Rockaway Beach, N. Y., in full settlement of all her claims against the United States arising out of the failure of the Department of the Army, Class E. Allotment Section, to forward premiums to the Pioneer American Insurance Co., Houston, Tex., on a life-insurance policy issued by that company to her son, William B. Rice, RA12296456 (George Rice, Jr.) deceased, prior to the last day of grace as authorized to do under the law.

STATEMENT

The records of the Department of the Army show that on December 31, 1947, a person representing himself to be William B. Rice, enlisted as a private in the Regular Army, in New York, N. Y., for a period of 3 years. There was assigned to him Army Serial No. RA12296456. In a formal statement, entitled "Declaration of Applicant," signed by said party at the time of his enlistment he stated that he was born at Rockaway Beach, N. Y., on March 14, 1930, being the son of George Rice and Mrs. Sally Rice. At the time of his enlistment said enlistee delivered to the Army authorities a document, entitled "Parental Consent Certificate for Enlistment in the Regular Army," executed by George Rice and Sally Rice before Leonard Samuels, a notary public of Queens County, N. Y., on December 29, 1949, which stated in pertinent part as follows:

> We, the undersigned being the father and mother of William Billy Rice, a citizen of the United States, who resides at 254 Beach 81st Street, Rockaway Beach, Long Island, N. Y., who was born in Rockaway Beach, N. Y., Queens County, on March 14, 1930, hereby give our consent to his enlistment in the Regular Army or Air Force of the United States, for a period of 3 years.

On January 6, 1948, in answer to a question contained in a form presented to him by the Army authorities, which asked whether he desired "National service life insurance or United States Government life insurance," Private Rice stated "No Insurance Desired, William B. Rice."

The records of the Department of the Army show than on January 27, 1948, the aforementioned soldier signed a form which he filed with the proper military authorities, in which he authorized a class E allotment of $8.82 to be deducted from his pay each month and remitted to the Pioneer American Insurance Co., Houston, Tex. By application executed at Fort Dix, N. J., on January 30, 1948, a person purporting to be "William B. Rice" applied to said insurance company for a policy of life insurance. A 2-year term, 18-year endowment policy was issued, effective March 1, 1948, in the face amount of $2,000. This policy did not contain a so-called double-indemnity clause. Mrs. Sally Rice, 254 Beach 81st Street, Rockaway Beach, N. Y., the mother of the insured, was named as the beneficiary in said policy. On November 8, 1950, Private Rice, while stationed at Fort Eustis, Va., and serving as a member of the 55th Transportation Truck Company, was fatally injured when the ¼-ton Army truck he was driving ran off the road and overturned. He was pronounced dead at 12:15 a. m. on November 9, 1950.

The class E allotment of $8.82 per month authorized by Private Rice for the payment of the premiums on the aforesaid life-insurance policy was paid by the Army authorities each month to the Pioneer American Insurance Co. until July 31, 1950, when the payment of such allotment was suspended by the Class E Allotment Division, Army Finance Center, St. Louis, Mo., while an audit was being made of this soldier's account. The insurance company was advised of such suspension by a notice of suspension dated September 1, 1950. Upon the completion of the audit of the account of this soldier it was found that the class E allotment in question had been properly credited to his account, and a check dated April 20, 1951, in the amount of $26.46, covering the insurance premiums due on his policy for the months of August, September, and October 1950, was mailed by the Class E Allotment Division to the Pioneer American Insurance Co., attached to a letter bearing the same date which requested that the amount of said check be credited by the insurance company to Private Rice's account. The policy in question, however, had lapsed on September 1, 1950, and the soldier had died prior to the transmission of said check to the insurance company.

On August 8, 1951, the Pioneer American Insurance Co. advised the Class E Allotment Division that it had received a letter from J. Lewis Fox, Esq., attorney at law, 83–20 Rockaway Beach Boulevard, Rockaway Beach, N. Y., in which reference was made to the aforementioned letter of April 20, 1951, from the Class E Allotment Division to said insurance company and the check for $26.46 enclosed therewith. The insurance company further advised that it had received neither the letter of April 20, 1951, nor the check in question. Thereupon the Army Finance Center at St. Louis stopped the payment of said check and requested the issuance of another check in the amount of $26.46 in lieu thereof. On October 16, 1951, the insurance company advised the Army Finance Center at St. Louis that if a duplicate check should be received by it the same would be returned because Private Rice's insurance had lapsed prior to his death due to nonpayment of premiums. Later the above-mentioned check, dated April 20, 1951, in the amount of $26.46, was received by the insurance company, but the company returned it to the Class E Allotment Division on the ground that the policy was not in force at the time of the insured's death. The insurance company refused to pay the amount of the policy, or any part thereof, to the beneficiary named therein.

There is no evidence that Private Rice was ever notified by anyone of the action taken by the Class E Allotment Division in suspending the payment of the premiums on the aforesaid policy of life insurance with the Pioneer American Insurance Co. He, therefore, had no opportunity to make any other provision for the payment of such premiums and thus prevent the insurance from lapsing. The procedure which resulted in the administrative suspension of the payment of the allotment in this case is no longer being followed by the Department of the Army.

The Department of the Army is of the opinion that the evidence in this case establishes the following facts: (1) George Rice, Jr., enlisted in the Army under the name of William B. Rice; (2) George Rice, Jr., applied for and was issued a policy of life insurance in the face amount of $2,000 under the name of William B. Rice; and (3) George Rice, Jr., is the person who died on November 9, 1950.

The Department of the Army concluded, after an investigation of all the facts surrounding this claim, that the lapse of the insurance policy of the deceased was due solely to the actions of the Department of the Army and, for this reason, there is proper basis for equitable relief by the Congress.

The committee is constrained to agree with the favorable report of the Department of the Army. Had it not been for the action of the Allotment Division at the Army Finance Center, the policy would not have lapsed and the claimant herein would have been entitled to the proceeds of the insurance policy on the life of her deceased son. However, the committee amended the bill so as to provide that the compensation awarded by this legislation would be paid directly to the decedent's mother, who was the named beneficiary in the insurance policy,

The committee is of the opinion that the equities of this case require compensation to the claimant for the loss suffered and, therefore, recommends favorable consideration of this bill, H. R. 2760, as amended.

Attached hereto and made a part hereof is the report submitted by the Department of the Army on a similar bill of the 83d Congress and other evidentiary data relating to this claim.

DEPARTMENT OF THE ARMY,
Washington, D. C., June 11, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 8281, 83d Congress, a bill for the relief of the estate of William B. Rice, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $4,000 to the estate of William B. Rice, RA–12296456 (George Rice, Junior), deceased, of Rockaway Beach, New York, in full settlement of all claims against the United States sustained as the result of the failure of the Department of the Army, Class E Allotment Section, to forward premiums to the Pioneer American Insurance Co., Houston, Texas, prior to the last day of grace as authorized to do so under the law."

The records of the Department of the Army show that on December 31, 1947, a person representing himself to be William B. Rice, enlisted as a private in the Regular Army, in New York, N. Y., for a period of 3 years. There was assigned to him Army serial No. RA12296456. In a formal statement, entitled "Declaration of Applicant," signed by said party at the time of his enlistment he stated that he was born at Rockaway Beach, N. Y., on March 14, 1930, being the son of George Rice and Mrs. Sally Rice. At the time of his enlistment said enlistee delivered to the Army authorities a document, entitled "Parental Consent Certificate for Enlistment in the Regular Army." executed by George Rice and Sally Rice before Leonard Samuels, a notary public of Queens County, N. Y., on December 29, 1949, which stated in pertinent part as follows:

"We the undersigned being the father and mother of William Billy Rice, a citizen of the United States, who resides at 254 Beach 81st Street, Rockaway Beach, Long Island, N. Y., who was born in Rockaway Beach, N. Y., Queens County, on March 14, 1930, hereby give our consent to his enlistment in the Regular Army or Air Force of the United States, for a period of 3 years."

On January 6, 1948, in answer to a question contained in a form presented to him by the Army authorities, which asked whether he desired "National service life insurance or United States Government life insurance," Private Rice stated "No Insurance Desired, William B. Rice."

The records of the Department of the Army show that on January 27, 1948, the aforementioned soldier signed a form which he filed with the proper military authorities, in which he authorized a class E allotment of $8.82 to be deducted from his pay each month and remitted to the Pioneer American Insurance Co., Houston, Tex. By application executed at Fort Dix, N. J., on January 30, 1948, a person purporting to be "William B. Rice" applied to said insurance company for a policy of life insurance. A 2-year term, 18-year endowment policy was issued, effective March 1, 1948, in the face amount of $2,000. This policy did not contain a so-called double-indemnity clause. Mrs. Sally Rice, 254 Beach 81st Street, Rockaway Beach, N. Y., the mother of the insured, was named as the beneficiary in said policy. On November 8, 1950, Private Rice, while stationed at Fort Eustis, Va., and serving as a member of the 55th Transportation Truck Company, was fatally injured when the ¼-ton Army truck he was driving ran off the road and overturned. He was pronounced dead at 12:15 a. m. on November 9, 1950.

The class E allotment of $8.82 per month authorized by Private Rice for the payment of the premiums on the aforesaid life-insurance policy was paid by the Army authorities each month to the Pioneer American Insurance Co. until July 31, 1950, when the payment of such allotment was suspended by the Class E Allotment Division, Army Finance Center, St. Louis, Mo., while an audit was being made of this soldier's account. The insurance company was advised of such suspension by a notice of suspension dated September 1, 1950. Upon the completion of the audit of the account of this soldier it was found that the class E allotment in question had been properly credited to his account, and a check dated April 20, 1951, in the amount of $26.46, covering the insurance premiums due on his policy for the months of August, September, and October 1950, was mailed by the Class E Allotment Division to the Pioneer American Insurance Co., attached to a letter bearing the same date which requested that the amount of said check be credited by the insurance company to Private Rice's account. The policy in question, however, had lapsed on September 1, 1950, and the soldier had died prior to the transmission of said check to the insurance company.

On August 8, 1951, the Pioneer American Insurance Co. advised the Class E Allotment Division that it had received a letter from J. Lewis Fox, Esq., attorney at law, 83–20 Rockaway Beach Boulevard, Rockaway Beach, N. Y., in which reference was made to the aforementioned letter of April 20, 1951, from the Class E Allotment Division to said insurance company and the check for $26.46 enclosed therewith. The insurance company further advised that it had received neither the letter of April 20, 1951, nor the check in question. Thereupon the Army Finance Center at St. Louis stopped the payment of said check and requested the issuance of another check in the amount of $26.46 in lieu thereof. On October 16, 1951, the insurance company advised the Army Finance Center at St. Louis that if a duplicate check should be received by it the same would be returned because Private Rice's insurance had lapsed prior to his death due to nonpayment of premiums. Later the abovementioned check, dated April 20, 1951, in the amount of $26.46, was received by the insurance company, but the company returned it to the Class E Allotment Division on the ground that the policy was not in force at the time of the insured's death. The insurance company refused to pay the amount of the policy, or any part thereof, to the beneficiary named therein.

There is no evidence that Private Rice was ever notified by anyone of the action taken by the Class E Allotment Division in suspending the payment of the premiums on the aforesaid policy of life insurance with the Pioneer American Insurance Co. He, therefore, had no opportunity to make any other provisions for the payment of such premiums and thus prevent the insurance from lapsing. The procedure which resulted in the administrative suspension of the payment of the allotment in this case is no longer being followed by the Department of the Army.

There is on file in the Department of the Army, a joint affidavit executed by George Rice and Sally Rice on August 13, 1951, the text of which reads as follows:

"We, Mr. and Mrs. George Rice, residing at 254 Beach 81st Street, Rockaway Beach, Long Island, N. Y., being first duly sworn, do depose and state:

"That our son, George Rice, Jr., who was born May 31, 1932, borough of Queens, N. Y., entered service in the United States Army under the birth certificate of his brother, William Rice, who was born March 14, 1930, in the borough of Queens, N. Y.

"That in fact, it is our son, George Rice, Jr., who is deceased.

"That our son, William B. Rice, is alive and residing with us at 254 Beach 81st Street, Rockaway Beach, Long Island, N. Y.

"That the above statements being true, it is requested that the Veterans' Administration take the necessary action to correct all records pertaining to this case."

There is also on file the affidavit of William B. Rice executed on August 14, 1951, in which he stated, in pertinent part, as follows:

"I, William B. Rice, the brother of George Rice, Jr., being duly sworn depose and state—

"1. That my brother's correct name is George Rice, Jr., but he took my name upon entering service, evidently because he was under age. My brother was born May 31, 1932, in Queens, N. Y., and I was born March 14, 1930, also in Queens.

"2. That my brother, George Rice, Jr., died while still in service.

"3. That I am alive and residing with my parents, George and Sally Rice, * * *.

"4. That I am employed by John Ross, 227 Franklin Place, Woodmere, Long Island, N. Y., and am known by my correct name of William B. Rice.

"5. That this affidavit is executed in order that the Veterans' Administration records may be corrected."

The Department of the Army is of the opinion that the evidence in this case establishes the following facts: (1) George Rice, Jr., enlisted in the Army under the name of William B. Rice; (2) George Rice, Jr., applied for and was issued a policy of life insurance in the face amount of $2,000 under the name of William B. Rice; and (3) George Rice, Jr., is the person who died on November 9, 1950.

Inasmuch as the lapse of the insurance policy in question was due solely to the actions of the Department of the Army, this Department is of the opinion that the facts and circumstances in this case present a proper basis for equitable relief by the Congress. It is suggested, however, that the subject bill be amended to provide that the award be made to Mrs. Sally Rice, the beneficiary under said insurance policy, in place of the estate of William B. Rice; that the amount of the award be reduced to $2,000, the face value of the policy in question (said policy having contained no so-called double-indemnity clause); and that attorney fees be limited to 10 percent of the amount appropriated.

Subject to the foregoing considerations, the Department of the Army would have no objection to the enactment of the subject bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

GENERAL ACCOUNTING OFFICE,
CLAIMS DIVISION,
Washington, March 20, 1952.

MRS. SALLY RICE,
Rockaway Beach, N. Y.

DEAR MRS. RICE: There has been referred to this office by the Department of the Army your claim for arrears of pay and allowances due your late son, William Billy Rice, private, United States Army, service No. RA12296456, who lost his life in the service of his country on November 8, 1950.

Please be advised that a thorough examination of your late son's final pay account has been made and it has been determined that there is no balance of arrears of pay and allowances due.

Very truly yours,

M. A. KIRK,
Claims Reviewer
(For the Comptroller General of the United States).

ARMY FINANCE CENTER,
St. Louis, Mo., February 19, 1952.

Hon. L. GARY CLEMENTE,
House of Representatives, Washington, D. C.

DEAR MR. CLEMENTE: Reference is made to your letter dated January 23, 1952, concerning an allotment for the payment of commercial life insurance in the case of Pvt. William B. Rice, RA12296456, deceased November 8, 1950.

The type of allotment available to a serviceman for the above-mentioned purpose is known as a class E allotment. A class E allotment is a specified portion of a service member's pay authorized by the service member to be paid to a desig-

nated payee. The authorization form is signed by the service member, approved and signed by the finance officer of his organization, and forwarded through military channels to the allotment paying division of this center. Payments are made by this office on the basis of the authorization form and corresponding deductions are made from the service member's pay by his organization. It is the practice of the Department of the Army to furnish a serviceman every assistance in the initiation of an allotment to a proper allottee to the extent his pay account will permit and to continue payment of allotments authorized by him until he requests discontinuance or information is received which would require an adjustment of his allotment account.

Available records indicate that a class E allotment of $8.82 per month, authorized by the decedent in favor of the Pioneer American Insurance Co., Houston, Tex., commencing February 1, 1948, was administratively suspended by this office effective July 31, 1950, to permit an audit of the soldier's allotment account. Upon completion of the audit of the soldier's account, it was determined that the allotment was properly credited and check No. 125,060, dated April 20, 1951, for $26.46, representing payment of premiums for the months of August, September, and October 1950, was forwarded to the above-named insurance company with request that the amount be credited to the serviceman's account.

The insurance company reported nonreceipt of the above-dated letter and check and stop payment action was initiated September 20, 1951, with request for issuance of a substitute check for a like amount. The insurance company was advised accordingly by this office on October 10, 1951.

Further investigation discloses that check No. 125,060 was subsequently returned to this office and forwarded to the General Accounting Office, Washington, D. C., as an undeliverable item. This office wrote the General Accounting Office on February 15, 1952, requesting that the check be remailed to the Pioneer American Insurance Co., Houston, Tex.

In instances where examination of the records available to this office fails to disclose any documents or information which would indicate that an individual had intended to discontinue payment of premiums on an insurance policy by class E allotment, and that failure of an insurance company to properly receive payments was occasioned by an administrative error on the part of the Government rather than the fault or negligence of the allotter, a check representing all unpaid premiums determined to be due is tendered to the insurance company. The Government, however, does not exercise any compulsion with regard to acceptance of these premiums by the insurer. Where the insurance company refuses to accept a premium payment, this office has no alternative to accepting the return of the check and where necessary, advising the interested persons of the action taken by the insurance company.

With regards and best wishes, I am

Sincerely yours,

B. N. BRYAN,
Colonel, FC, Deputy Commander.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ADJUTANT GENERAL,
Washington, D. C. December 26, 1950.

Mrs. SALLY RICE,
Rockaway Beach, Long Island, N. Y.

DEAR MRS. RICE: I am writing you concerning the death of your son, Pvt. William B. Rice.

The military authorities have conducted an investigation to determine the circumstances surrounding your son's death and the report has now been received in the Department of the Army. This report discloses that Private Rice received severe injuries at approximately 8:30 p. m., November 8, 1950, when the Army jeep which he was driving without proper authority was involved in an accident, on the A. F. Hill Military Reservation, Va. The evidence reveals that your son misappropriated the vehicle earlier in the evening and proceeded on an unauthorized trip to Bolling Green, Va. After a short visit, he started the return trip to camp traveling north on U. S. Highway No. 301, then turning off on Virginia Highway No. 608, a dusty gravel road. At a point about 3 miles from the main highway, the jeep accidentally skidded on a curve and overturned in a ditch, throwing your son and his three soldier companions to the ground. With the assistance of two civilians who resided in the area, your son was removed to an

aid station and then transferred, by ambulance, to the Mary Washington Hospital in Fredericksburg; however, I regret to inform you that he was pronounced dead on arrival. The medical report shows that his death was due to severe internal chest injuries. In view of the fact that Private Rice was operating a Government vehicle without authority at the time of the accident, it is held by the Department of the Army that his death occurred not in line of duty and not due to misconduct.

The tragic and untimely death of your son is deeply regretted and my heartfelt sympathy is with you in your sorrow.

Sincerely yours,

EDWARD F. WITSELL,
Major General, USA,
The Adjutant General of the Army.

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Calendar No. 492

84TH CONGRESS, 1st Session } SENATE { REPORT No. 488

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

THOMAS F. HARNEY, JR.

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2907]

The Committee on the Judiciary, to which was referred the bill (H. R. 2907) for the relief of Thomas F. Harney, Jr., doing business as Harney Engineering Co., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 9, strike out the period, insert a colon and the following:

Provided, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay to Thomas F. Harney, Jr., doing business as Harney Engineering Co., of Worcester, Mass., the sum of $13,439.84, the amount determined by the United States Court of Claims, acting pursuant to Senate Resolutions 152 and 165, 81st Congress, to be equitably due the claimant.

STATEMENT

The findings and opinion of the United States Court of Claims are as follows:

[In the United States Court of Claims. Congressional Nos. 17860 and 17861. (Decided July 13, 1954.)]

D. A. SULLIVAN AND SONS, INC., AND THOMAS F. HARNEY, JR., DOING BUSINESS AS HARNEY ENGINEERING CO., v. THE UNITED STATES

Mr. Charles R. Clason for plaintiffs.

Mr. John R. Franklin, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for the defendant.

OPINION

LITTLETON, *Judge*, delivered the opinion of the court:

These are Congressional reference cases involving identical parties and claims and were consolidated for proceedings in this court. They were the subject matter of Senate Bill 982 and House of Representatives Bill No. 1598 both of the 81st Congress and were referred to this court by Senate Resolutions 152 and 165 of that Congress with instructions to proceed in accordance with sections 1492 and 2509 of title 28 of the United States Code, 1946 Ed., as amended.[1]

Said bills provide for the granting of relief to one Thomas F. Harney, Jr., doing business as the Harney Engineering Co., hereinafter referred to as Harney, for alleged losses suffered by him as the plumbing and heating subcontractor under two lump sum contracts between the defendant, acting through the Army Quartermaster Corps, and D. A. Sullivan & Sons, Inc., hereinafter referred to as Sullivan, which provided for the construction of building installations including 30 barracks at Fort Devens, Massachusetts, during the fall and winter of 1940–41.

Sullivan, although listed in the petitions as a plaintiff, has entered no appearance in these proceedings nor has any claim been asserted on his behalf.

Harney asks the recovery of $21,088.21. While this amount is made up largely of claims for the performance of alleged extra work, it likewise includes claims for the value of dismantled lumber from Harney's field office and work shop which was taken and used by soldiers at the camp, and for the return of $441.25 which was charged against him as his share of the liquidated damages assessed against Sullivan for delay in the completion of the contract work.

Sullivan's contracts contained the standard contract provisions found in all Government construction contracts, which provisions were incorporated by reference with only minor modifications into Harney's subcontracts. Findings 6 and 7.

The alleged extra work resulted as changes became necessary during the progress of the work. Harney performed this extra work under verbal instructions from Sullivan with the knowledge of defendant's representatives and although this work was approved and accepted by the defendant's supervisory engineer no change orders as contemplated by Articles 3 and 4 were ever issued to cover the work. This was so despite efforts by Harney to secure written instructions in advance, and his prompt submission of the costs to Sullivan after the completion of the work necessitated by the changes.

On June 30, 1941, Sullivan executed releases on both prime contracts reserving certain items for future claim, among which were the items with the exception of one upon which Harney bases his claims here. This one exception was the charge against Harney of $441.25 in liquidated damages.

On September 15, 1941, Sullivan submitted to the War Department a claim for excess labor costs totaling $18,996.51. This claim was referred to the General Accounting Office and upon the recommendation of that office Congress enacted a bill providing for payment to Sullivan of $14,481.87 in satisfaction of this claim. Harney's share of that amount was $4,314.16.

[1] Sec. 1492 reads as follows: "The Court of Claims shall have jurisdiction to report to either House of Congress on any bill referred to the court by such House, except a bill for a pension, and to render judgment if the claim against the United States represented by the referred bill is one over which the court has jurisdiction under other Acts of Congress."

Sec. 2509 reads as follows: "Whenever any bill, except for a pension, is referred to the Court of Claims by either House of Congress, such court shall proceed with the same in accordance with its rules and report to such House, the facts in the case, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy.

"The court shall also report conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant."

Again on January 9, 1942, Sullivan filed additional claims with the War Department. These claims dealt with extra work and included on behalf of Harney a claim for $17,768.74. While those portions of the claims filed by Sullivan on his own behalf were settled, those of Harney were never acted upon nor were they referred to the General Accounting Office. No explanation for this inaction has ever been given. It is those claims which Harney has asserted in these proceedings.

On March 2, 1943, Harney settled with Sullivan receiving for his work under the subcontracts $94,802; under change orders which were issued he received $5,997.15 and as his share of the labor claim settlement referred to above he received $4,314.16.

Unsuccessful in his efforts to secure a satisfactory settlement in the War Department through Sullivan, Harney went to Congress on his own behalf. During the pendency of his claims before Congress, the Secretary of the Army informed the Judiciary Committee of the House that the War Department was "not opposed to further examination and adjustment," provided payment to Harney did not exceed $17,767.86. The Secretary went on to point out, however, that the Army's investigation because of the inadequacy of Harney's cost records failed to develop to what extent, if any, the claims were based on costs incurred in performing extra work. The bill then before the House was amended to provide for payment of $17,767.86. The bill, as amended, passed the House and upon its presentation the Senate was referred to this court along with a similar bill pending in the Senate.

Harney's claims have been broken down into 16 separate items and are set out with the amounts found chargeable to each in our findings 13 through 28. None of these items of claim were covered by change orders or paid.

The defendant has raised several legal defenses, any one of which is sufficient to prevent legal recovery in this court. The first of these is the statutes of limitation. Any claim which Harney or Sullivan may have under the contracts as against the Government arose at the very latest on June 30, 1941, when the releases were executed. Since the claims were not referred to this court until July and September of 1949, and the petitions were not filed until February 15, 1950, all claims are barred by the six-year limitation of 28 U. S. C. 2501. This bar likewise applies to the loss of the dismantled lumber even though that claim is not one under the contracts.

The lack of privity of contract between the defendant and Harney bars the claims as well. Harney as a subcontractor has no independent cause of action against the Government and any legal right which he might assert against the Government would have to be made on his behalf by Sullivan. *H. Herfurth, Jr., Inc.* v. *United States*, 89 C. Cls. 122, 127. Thus any defense which would be effective against Sullivan would bar Harney as well. Sullivan entered no appearance in these proceedings and even if he did he would be barred at the outset because of his failure to adhere to or to even initiate the relief provisions of the contracts. *United States* v. *Holpuch*, 328 U. S. 234, 240; *United States* v. *Blair*, 321 U. S. 730, 736.

As for the $441.25 in liquidated damages assessed against Harney, that claim is further barred because it was not excepted from the releases as were the other claims. *Torres* v. *United States*, 126 C. Cls. 76.

Then too, certain of the claimed items of extra work (findings 21, 22, and 23) arose because of a misunderstanding as to the proper interpretation of particular specifications. Mr. Harney's interpretations were overruled by defendant's supervisory engineer and as a result of changes which then had to be made, Harney's costs were increased. Sullivan did not appeal those rulings by the supervisory engineer. Since under the contracts (finding 6) the interpretation of the supervisory engineer was to be controlling, any work done in accordance with those rulings must be held to have been work contemplated under the contracts. *United States* v. *Moorman*, 338 U. S. 457.[2]

The loss of the lumber from the dismantled field office and workshop although, as mentioned above, not one arising under the contracts is likewise a loss which cannot be recouped in this court. The lumber was taken by soldiers at the camp and used by them in building fires which is understandable when it is remembered that they were living in tents in Massachusetts during the winter awaiting the completion of these barracks. That use, however, was in the nature of a tortuous taking, and this court, of course, has no original jurisdiction over tort claims.

[2] But see the Act of May 11, 1954, Public Law 356, Section 2 which provides that "No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board."

Other than the legal objections pointed out above, defendant has resisted Harney's recovery on the question of proof, contending that his records are not susceptible to an audit to determine his excess costs, and that efforts in the past by the Army to audit Harney's books have proved futile because of the inadequacy of his cost records. Presented in the proceedings in this court with his first opportunity to fully present his claims, Harney has overcome this obstacle. The commissioner of this court on the basis of the testimony and records introduced found that Harney performed work valued at $13,439.84 on the buildings at Fort Devens for which he was not compensated. Included in this figure in addition to labor and material costs are allowances of 10% for job supervision, 15% for overhead and 10% for profit.[3] These additions were common practice in the trade and were reasonable for the types of work performed. All items of cost are supported by documentary evidence with the exception of two. These are the sums of $400 and $1,392 found to be the labor costs allocable to the work dealt with in findings 16 and 25 respectively. Both figures are found to be fair and reasonable on the evidence presented. *Eastman Kodak Company* v. *Southern Photo Company*, 273 U. S. 359, 379.

The difference in our figure and that claimed by Harney stems largely from the fact that portions of his claims, notably those deling with changes in the mess hall (finding 13) were found to be covered by those change orders which were issued and that a portion of the excess labor costs claimed here were recouped by Harney as part of his share ($4,314.16) of a settlement for extra labor costs which Sullivan had made with the defendant.

Neither the Army nor the defendant here has ever contended that the work upon which the claims are based was not performed or that the Government did not derive a benefit from it. However, in giving consideration to the equitable nature of Harney's claims, as section 2509, *supra*, requires, it must be pointed out that his first recourse, other than for the loss of the lumber, was against the prime contractor, Sullivan. In order to provide a more suitable remedy for those who may find themselves in Mr. Harney's position, prime contractors were at the time of the award of the contracts in question required, in conformity with 40 U. S. C. 270a, 49 Stat. 793, to execute, in addition to the customary performance bond, a payment bond the purpose of which was to operate for the "protection of all persons supplying labor and material in the prosecution of the work provided for in said contract * * *." A subcontractor may maintain an action against his prime contractor on that bond. See *United States for the Use and Benefit of W. A. Rushlight Co.* v. *Davidson*, 71 F. Supp. 401; *MacEvoy Co.* v. *United States for the Use and Benefit of Calvin Tomkins Co.*, 322 U. S. 102.

These bonds covering the work under the first contract, the larger of the two, were presented in evidence, but neither the payment bond nor the performance bond which Sullivan was required to execute in connection with the second contract was presented. A proceeding against Sullivan and his surety under the payment bond or against Sullivan alone was an "established legal remedy" which Harney evidently did not exercise nor has he offered in these proceedings an explanation for not having done so as contempleted by section 2509, *supra*.

Apparently both believed that a settlement satisfactory to all concerned could be achieved without resort to the appeal provisions of the contract or the necessity for the instituting of proceedings by Harney against Sullivan. While the latter did obtain two settlements with the Government after completion of the contract work, and prior to settlement with Harney, which evidently satisfied his claims, Harney's portions thereof failed to fully compensate him for all his expenses.

As already mentioned the claim for the loss of the lumber not being one under the contracts but a tortious taking is a claim which Harney is legally entitled to assert directly against the Government. If not for the bar of the statute of limitation and the lack of jurisdiction of this court over tort claims, Harney would be entitled to a judgment for the value of the lumber which we find to be $290. Finding 27. As a matter of equity he is entitled to that amount.

The charge of $441.25 had been deducted by Sullivan from his settlement with Harney as the latter's one-half share of the $882.50 in liquidated damages which had been assessed against Sullivan by the Government for delay in completion of the work under the contracts. While the facts (finding 28) show quite clearly that no delay in completion was chargeable to Harney's work, there is nothing to indicate that the Government was not entitled to assess the damages against Sullivan. His failure to except it from the releases supports such a view. The charging of half that amount against Harney appears to have been an arbitrary

[3] No allowance for overhead or profit was allowed for tha[illegible] ork set out in finding 17.

determination on Sullivan's part and does not represent a loss which Harney can with any merit assert against the Government.

CONCLUSION

We find no legal obligation on the part of the Government to compensate Harney for any of the claims presented. As pointed out above, merely lifting the bar of the statute of limitation would not operate to create such an obligation in the face of the other defenses, notably the lack of privity of contract insofar as the claims under the contracts are concerned.

Operating against an equitable right of recovery on behalf of Harney is his failure to pursue his remedy against the prime contractor and his failure here to explain why he failed to do so. This, of course, does not apply to the loss of the lumber which we recommended to Congress as representing an equitable claim in the amount of $290 against the Government.

That is not to say, however, that there is a complete lack of merit in plaintiff's claims based on the extra work. It is not disputed that the Government derived a benefit from it. During the attempts at settlement with the War Department it appears that Harney's chief obstacle was his inability to substantiate the costs chargeable to the extra work. This obstacle has been erased here, and on the basis of our findings, Congress may in the exercise of its discretion desire to reimburse Harney for that portion of his excess costs, $13,439.84, which we have found to be substantiated. Findings 13 through 26. The several items making up this sum of $13,439.84 are meritorious, and we recommend reimbursement of plaintiff in the sum of $13,439.84. This recommendation, however, is directed entirely to the discretion of the Congress.

This opinion and the findings of fact together with the conclusions therein will be certified to Congress pursuant to Senate Resolutions 152 and 165 of the 81st Congress, 1st Session.

MADDEN, *Judge;* WHITAKER, *Judge;* and JONES, *Chief Judge*, concur.

Judge LARAMORE took no part in the consideration or decision of this case.

FINDINGS OF FACT

The court, having considered the evidence, the briefs and argument of counsel, and the report of Commissioner C. Murray Bernhardt, makes the following findings of fact:

1. *a.* Plaintiff D. A. Sullivan and Sons, Inc. (hereafter referred to as Sullivan), a Massachusetts corporation, asserts no claim in this proceeding and did not participate in the hearing, but was the prime contractor with the United States in the contracts concerned.

b. Plaintiff Thomas F. Harney, Jr. (hereafter referred to as Harney), a United States citizen residing and doing business in Worcester, Massachusetts, under the name of Harney Engineering Company, was the plumbing and heating subcontractor under prime contracts between Sullivan and the United States. He claims $21,088.21 for the performance of extra work not called for under the original contracts, or covered by change orders, or otherwise compensated for.

2. Both claims reported herein represent the same cause of action, request duplicate relief and were consolidated for trial. They were the subject matter of Senate Bill No. 982 and House of Representatives Bill No. 1598, both of the 81st Congress, which were referred to this court by Senate Resolutions 152 and 165, respectively, of the same Congress, with instructions to—

> * * * proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28 of the United States Code and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally or equitably due from the United States to the claimant.

3. By letter dated July 28, 1948, the Secretary of the Army advised the Committee on the Judiciary, United States House of Representatives, which was then considering earlier private legislation for the relief of Harney, that the Army was "not opposed to further examination and adjustment by the Comptroller General of claims submitted by D. A. Sullivan and Sons, Inc., on behalf of Harney Engineering Co., provided payment does not exceed $17,767.86," however, the Secretary went on to inform the Committee that an examination by the Army had failed to determine "to what extent, if any, such costs were incurred in perform-

ing extra work." [4] Thereafter, Harney advised the Committee that he was "willing to accept the sum of $17,767.86 at this time in full settlement of my claims even though my principal loss will amount to an even greater sum if I receive payment in this amount."

4. Contract W–6101–qm–127 (hereafter referred to as contract 127), entered into August 23, 1940, between Sullivan and defendant through the Construction Division of the Army Quartermaster Corps, provided for the construction at Fort Devens, Massachusetts, of 20 barracks, a messhall, and six other buildings for $254,548 (later increased by change orders to $273,368.13). The appropriate bonds as required by 40 U. S. C. 270a, 49 Stat. 793, were executed by Sullivan on September 18, 1940. The original contract completion date of November 21, 1940, was extended by change orders to December 29, 1940, and the contract was accepted as complete May 9, 1941.

5. Contract W–6101–qm–150 (hereafter referred to as contract 150), entered into September 21, 1940, between the same parties, provided for the construction at Fort Devens, Massachusetts, of 10 additional barracks and one storehouse for $129,361 (later decreased by change orders to $123,325.32). The original contract completion dates of November 21, 1940, for the barracks and December 20, 1940, for the storehouse, were extended by change orders to December 26, 1940, and the contract was accepted as complete April 30, 1941.

6. Both contract 127 and contract 150 provided:

Article 2. *Specifications and drawings.*—The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy in the figures, drawings or specifications, the matter shall be immediately submitted to the contracting officer, without whose decision said discrepancy shall not be adjusted by the contractor, save only at his own risk and expense. The contracting officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided. Upon completion of the contract the work shall be delivered complete and undamaged.

Article 3. *Changes.*—The contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than Five Hundred Dollars shall be ordered unless approved in writing by the head of the department or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: *Provided, however,* That the contracting officer if he determines that the facts justify such action, may receive and consider, and with the approval of the head of the department or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article 15 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

* * * * * * *

Article 5. *Extras.*—Except as otherwise herein provided, no charge for any extra work or material will be allowed unless the same has been ordered in writing by the contracting officer and the price stated in such order.

* * * * * * *

Article 15. *Disputes.*—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed.

* * * * * * *

[4] House Report No. 676, 81st Congress, reporting H. R. 1598.

GC–8. *Liability for Damages:* The contractor will be held responsible for all damage to the work under construction * * *. He will be held answerable for all damages that may occur to persons, property, animals, or vehicles from want of proper * * * watching, * * *.

* * * * * * *

GC–15. *Interpretation of Contract:* Unless otherwise specifically set forth, the contractor shall furnish all materials, labor, etc., necessary to complete the work according to the true intent and meaning of the drawings and specifications, of which intent and meaning the C. Q. M. shall be the interpreter. * * *

* * * * * * *

GC–20. *Protection of material and work:* The contractor shall, at all times, carefully and properly protect all materials of every description, both before and after being used on the job. * * *

* * * * * * *

GC–31. *Laying out work:* The contractor must lay out his work. He shall be responsible for measurements. He must exercise proper precaution to verify the figures before laying out the work and will be held responsible for any errors therein that otherwise might have been avoided. He shall promptly inform the C. Q. M. of any errors or discrepancies he may discover in the drawings and specifications, in order that the proper corrections may be made and understood. * * *

* * * * * * *

SC–2. *Liquidated Damages:* If the contractor delays the completion of the work under this contract beyond the time of completion stated in the contract, then the contractor shall pay the United States as fixed, agreed and liquidated damages the amount of Two and One-Half Dollars ($2.50) per building, per calendar day of delay, until the work is completed or accepted, subject to the provisions of Article 9 of U. S. Government Contract Form No. 23, Revised Sept. 9, 1935.

7. Thereafter Harney entered into two subcontracts with Sullivan, one of them undated and the other dated September 17, 1940. The first provided for performance by Harney of all plumbing and heating work required by specifications P1–H21 under contract 127 for $61,200. The other provided for performance by Harney of all plumbing and heating work required by contract 150 and certain additional plumbing and heating work under contract 127, in accordance with the plans and specifications of the prime contracts, for $33,602. Each subcontract incorporated by reference the drawings and specifications of the prime contract to which it related, and provided:

Section 5. * * * The Subcontractor agrees—

(a) To be bound to the Contractor by terms of the Agreement, General Conditions, Drawings and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.

* * * * * * *

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one week.

8. *a.* Formal change orders to contracts 127 and 150 effected a net increase of $6,102.15 in Harney's subcontracts. The extra work constituting the present claim was performed by Harney under verbal instructions from Sullivan with the knowledge of defendant's representatives (although Harvey had unsuccessfully sought written instructions from Sullivan in advance), was approved and accepted by defendant's supervisory engineer, but was not covered by change orders. After completion of the extra work Harney, with reasonable promptness, submitted to Sullivan a statement of the cost of the extra work performed.

b. On March 2, 1943, Sullivan settled with Harney. Sullivan paid Harney $100,799.15 for the work performed by Harney under the subcontracts ($94,802) and change orders relating thereto ($5,997.15). Sullivan also paid Harney $4,314.16 as the latter's share of a larger sum received by Sullivan from defendant in settlement of a claim for extra labor (see Finding 29, *infra*).

9. Releases executed on June 30, 1941, by Sullivan to defendant on both prime contracts reserved certain items for future claim, among which the following related to extra work done by Harney under his subcontracts:

Extra labor and material on plumbing and heating	$15,198.39
Substitution of fixtures	2,349.16
Changes in duct work (20 barracks)	1,207.40
	18,754.95

10. *a.* On January 9, 1942, Sullivan filed with the War Department a claim for $32,942.49, which included, on behalf of Harney, $17,768.74 for extra work. While the claims filed by Sullivan on its own behalf were settled, those relating to the extra work performed by Harney were never acted on by the War Department nor were they referred to the General Accounting Office. They constitute the claims in this proceeding.

b. The records contain no findings of the contracting officer as to any item of Harney's claim, and there is no indication that such findings were made or requested.

11. *a.* Harney's records as to material used in the performance of the subcontracts are imperfect. Supplies used were purchased in bulk and cut to fit particular installations, were inventoried in place, and sales invoices covering the purchases were missing in most cases. While records of Harney made in the regular course of business established the type and quantity of supplies used in performing the extra work, the costs assigned to most of the supplies in succeeding findings represent the net cost to persons such as Harney in the plumbing trade at that time and in that area. Such net costs were standardized in the trade, and are reasonable costs of the supplies used by Harney in the performance of his subcontract.

b. To the direct costs of material (excluding fixtures and equipment) and labor in each item of Harney's claim, except where otherwise indicated, there has been added in succeeding findings, 10% of such direct costs for job supervision,[5] 15% of total job costs for overhead, and 10% of total costs[6] for profit. These additions were common practice in the trade and were reasonable for the types of work performed. Harney's total costs amount to 90.9% of the amounts found and reported herein for extra work, the balance representing the profit claimed.

c. The cost of direct labor in the succeeding findings includes 6.99% to cover payroll taxes and insurance paid by Harney.

d. None of the items of claim enumerated in succeeding findings were covered by change orders or paid.

12. The principal changes in the original contracts involved the enlargement of the mess-hall to accommodate 1,500 men instead of 1,000 men. At the outset of the contracts soldiers were encamped at Fort Devens in tents. As cold weather approached the defendant's representatives requested that the work on the barracks be accelerated and that they be completed for occupancy ahead of schedule to provide suitable shelter for the soldiers. The work in the 20 barracks under contract 127 was accelerated by Sullivan and Harney and they were occupied by soldiers on the following dates:

5 barracks on November 3, 1940
5 barracks on November 6, 1940
10 barracks on November 17, 1940

The advancement of the work on the barracks necessitated the substitution of many plumbing and heating fixtures and equipment then on order for 10 of the barracks with other equipment available for immediate delivery, so that the installations could be made without delay. The occupancy of the barracks ahead of schedule interfered with the normal performance of additional work required in these buildings, but the increased cost occasioned thereby was indeterminable and no claim was made.

13. *Changes in messhall.*—After substantial completion of the plumbing and heating work for the messhall, the Government ordered changes in its construction and equipment (Finding 12, *supra*). Harney, submitted and defendant rejected estimates for the plumbing and heating work required by the changes. Thereafter Harney proceeded with the extra work under oral instructions from Sullivan and with the knowledge and acquiescence of defendant's representatives, performing some work in addition to that contained in his estimate. Later defendant issued change orders covering most, but not all, of the extra work performed by Harney. The total cost of extra work by Harney in connection with

[5] Including Harney's own time, extra payments to working foremen, timekeeper's pay, and certain indeterminable job costs.
[6] I. e., direct costs plus supervision and overhead.

changes made in the messhall was $6,602.68.[7] Having previously recovered $5,696.33 through prior change orders, and $523.83 through settlement of the labor claim applicable to such changes (see Finding 29, *infra*), the net amount of the unreimbursed extra work performed by Harney on the messhall was $382.52.

14. *Tending furnace in messhall.*—When Harney received verbal orders for the extra work in the messhall, although the contract required him to maintain heat in the boilers for only 24 hours for testing purposes, at Sullivan's request and with the defendant's knowledge and acquiescence, he continued to furnish heat for two weeks thereafter to protect the work and workers, thereby facilitating completion of the work. Although it has been requested by Harney at completion of the boiler tests to take over and maintain the heating system thereafter, defendant failed to do so until Harney drained the system and withdrew his personnel. Exclusive of certain excess labor costs previously recovered by Harney, his costs in maintaining the heating system for the period following completion of the boiler tests were $694.79.

15. *Replacement of vacuum steam pump.*—A vacuum pump supplied by Harney agreed with specifications and was approved by defendant's representative, but had to be substituted by Harney for another type because of changed conditions. This change cost Harney $189.36.

16. *Substitution of fixtures and materials for first 10 barracks.*—Plumbing fixtures for 10 barracks were ordered by Harney for delivery during the first week of November 1940. In order to house troops who were living in tents in the area, defendant ordered Sullivan and Harney to advance the completion dates. Harney was unable to obtain advanced delivery of the plumbing fixtures on order and had to purchase substitute fixtures on the open market, at an additional cost to him of $1,278.91.[8]

17. *Electric wiring for hot air heating system.*—The heating system of each building under both contracts 127 and 150 required special wiring for the hot air circulating controls. At the urging of the defendant's representatives who wanted to advance the occupancy of the buildings, Harney, who had already arranged to have the wiring work performed, negotiated with two larger contractors who were able to complete the work more rapidly at a higher cost.

In the meantime Sullivan hired an electrical contractor to do the work on a cost-plus basis. The wiring was installed in accordance with a new diagram prepared by defendant's supervisory engineer without approval by higher authority, and necessitated the changing of heat controls by Harney to accommodate the new plan of wiring.

After the wiring was installed it was found unsatisfactory, and the construction quartermaster directed that the work be revised in accordance with a plan previously prepared by Harney and approved. This necessitated the reinstallation by Harney of heat controls as originally provided.

Sullivan paid $4,188.84 for this work and deducted the same from sums otherwise due Harney. The increased cost to Harney by reason of these changes was $3,033.84 ($2,167.04 under contract 127 and $866.80 under contract 150).[9]

18. *Temporary smoke pipes for 20 barracks.*—As a result of defendant's urging to advance the occupancy date of the barracks, and at the authorization of defendant's heating inspector, Harney installed between the heaters and chimneys in 20 barracks temporary smoke pipes which did not comply with specifications. The smoke pipes, which were temporary expedients through the winter period, were later replaced with specification pipes at an additional cost to Harney of $706.95.

19. *Transportation of plumbers and steamfitters.*—In order to meet similar allowances made under a Government cost-plus-fixed-fee contract let later to other contractors at Fort Devens, Harney was compelled by the unions to pay his union employees 50 cents a day for transportation to and from the job site. Of the total amount of such transportation allowances paid by Harney throughout the contract period, $137.50 relates to the performance of extra work and represents additional cost to him not otherwise reimbursed or included in other items of claim herein reported.

20. *Extra trucking.*—Harney claims $317 additional expense for 212 hours of extra trucking occasioned by reason of the advancement of completion of the barracks and overtime required for such performance. While extra trucking was

[7] This sum is exclusive of transportation allowances of $81 paid to employees, which is dealt with in Finding 19, *infra*.

[8] Includes $400 for labor not supported by documentary evidence, but found to be fair and reasonable on the evidence presented.

[9] No allowance for overhead or profit was made on this item since the work involved other than the reinstallation of the heat controls was done by another subcontractor.

performed, fair allowances for the cost thereof have been included in Findings 13, 15 and 16, *supra*.

21. *Installation of piping and traps four feet below grade inside of buildings.*—Harney claims the additional cost of installing piping and water traps four feet below grade inside of the buildings, which was performed under verbal protest. Contract drawings show the piping layout, but do not show the depth of the pipes below grade. Nor did Harney's plan for the piping layout, which was approved by the construction quartermaster, show the depth of the piping. The specifications provide:

PLUMBING

P–1. *Scope of work:* * * * Where drainage pipes are shown 1½" and are buried in the ground, they are to be increased to 2". All waste pipes and drain pipes below the floor levels of all buildings shall be buried in the ground at least 4'0" below ground grade.

* * * * * * *

P–8. *General directions:* * * * Unless otherwise directed all underground piping outside of buildings shall be installed below the frost line. The exterior utilities shown on plans are diagrammatic and their exact location, depth and invert elevations shall be as directed by the C. Q. M. without additional cost to the U. S.

* * * Where waste pipes are buried in the ground, they are not to be smaller than 2".

* * * * * * *

P–16. *Traps:* Each fixture and piece of equipment requiring connections to drainage system (except fixtures trapped through grease interceptors) shall be separately trapped. The traps shall be placed as near to the fixture as possible and no fixture shall be double trapped. * * *

The specifications also provided under "Excavating, filling and grading":

4. *Excavation:* * * * All footings shall be excavated to a depth not less than 6" below natural grade and 6" below normal frost line of 3'6".

5. *Backfilling and grading:* * * * Grading under buildings and within an area ten feet outside of building lines shall be performed in such manner as to prevent accumulation of water within the area. * * *

The final grades under the buildings were not established until after contract 127 was awarded.

The toilet and wash rooms and the heater room in each barracks, where the underground drainage and waste piping were required, were provided with concrete slab flooring poured upon the compacted earth base. Harney ran the drain pipes from approximately four feet underground outside of the buildings with a vertical rise inside of the building walls for installation immediately below the concrete floor slabs.

Defendant's supervisory engineer stopped the installation of piping in this manner and required that all piping and traps be installed to a uniform depth of four feet below the ground level to avoid freezing. Harney protested this requirement verbally. There was no danger of freezing underneath the concrete floor slabs of these rooms, which were heated, and traps for the wash bowls and wash trays were installed above the concrete floor level.

Harney requested a written order requiring these installations four feet below the ground level as extra work which the supervisory engineer declined to furnish. All piping and drainage traps were installed four feet below the ground level as required by defendant's supervisory engineer.

When the work was substantially completed, a representative of the construction quartermaster found it objectionable to have these installations four feet below the ground level, because of difficulty and expense of cleaning the pipe traps.

The contract specifications and drawings did not require Harney to make such installations four feet below ground level. The additional cost to Harney resulting from the extra work performed under erroneous instructions of the supervisory engineer was $1,583.70 ($1,055.80 under contract 127 and $527.90 under contract 150).

22. *Changes in duct work for heating systems.*—The barracks plans required the installation of metal circulating ducts from the heating room in each barracks to the first and second floors. Harney prefabricated the duct work for installation in each barracks, but in the course of installation found an obstruction on the second floor ceiling in the form of a structural roof brace which was not indicated on the plans or specifications which had been furnished him to follow. Defendant's inspector would not permit the relocation of the impeding roof brace so as to

allow the installation of Harney's prefabricated ducts to proceed as planned, and Sullivan ordered Harney to alter the duct work so as to accommodate the uncontemplated situation, assuring him that a change order would be issued. Harney altered the duct work accordingly and installed the same, and Sullivan backcharged against Harney certain charges for carpentry work necessitated by the change. No change order was issued. The additional cost to Harney for the changes made was $2,667.69 ($1,778.46 under contract 127 and $889.23 under contract 150).

23. *Covering smoke breeching in mess hall.*—The plans and specifications did not require insulation of the smoke breeching from the mess hall boilers to the chimneys. Under instructions from defendant's supervisory engineer, Sullivan installed insulation covering on the smoke breeching, backcharging the cost against Harney, and Harney installed certain additional covering on exposed portions of the smoke breeching connections. The additional cost to Harney for the extra work, including Sullivan's backcharge, was $582.59.

24. *Lowering floor drains in heater rooms.*—After Harney had installed all plumbing and heating facilities in the barracks under the plans for their advanced occupancy, the defendant established the final floor grades for the heater rooms thereby causing expenses in the amount of $166.29 to Harney in lowering floor drains to accommodate the final grades.

25. *Plumbing and heating maintenance work during occupancy of barracks.*—The 20 barracks under contract 127 were completed for occupancy in November 1940, but were not officially accepted as completed until May 9, 1941. During the period of occupancy prior to formal acceptance, the plumbing and heating facilities were used and operated by military personnel. Reports of frozen pipes, stopped toilets and traps, and damaged or missing equipment were referred to Harney for correction, and required the equivalent of the full-time services of a plumber and helper for approximately a 60-day period. While an indeterminable amount of the work done was corrective in nature and Harney's responsibility, the reasonable cost to Harney for providing repairs and replacements that were not his responsibility was $2,000.[10]

26. *Increased wages for carpenters.*—Sullivan employed carpenters to install asbestos board over furnaces in the buildings and backcharged the cost to Harney. Although the contracts specify a rate of $1.125 per hour for carpenters in the contract area, Sullivan was obliged to pay them $1.25 per hour to meet similar rates paid to carpenters working on a government cost-plus-fixed-fee contract let later to contractors at Fort Devens. The total wage differential thus paid was $15, which was not included in the prior labor claim by Harney which was settled (see Finding 8*b*, *supra*).

27. *Destruction of portable field office and workshop.*—Upon the completion of his work, Harney dismantled his field office and workshop for removal from the site, but was unable to obtain a permit for its removal the same day. Upon return to Fort Devens for a permit he discovered that the siding and timbers had been broken up and used by soldiers for campfires and other purposes, without authority of government contract representatives.

The value of the materials so used or destroyed was $290.

28. *Liquidated damages.*—In the final settlement between defendant and Sullivan liquidated damages of $882.50 were assessed and deducted from the contract prices for delay in completion. The amounts reserved in releases executed by Sullivan June 30, 1941, did not include recovery of the liquidated damages. Sullivan deducted $441.25 from his settlement with Harney as the latter's one-half share of the liquidated damages, of which sum $341.25 was allocable to contract 127 and $100 to contract 150. The barracks were occupied prior to contract completion dates. The only items of plumbing and heating which substantially delayed completion and acceptance were replacement of temporary smoke pipes which were installed on the furnaces in the barracks to provide heat for earlier occupancy, and the replacement of motors for heat-circulating fans which did not meet specifications because they lacked covers. Permission was granted to replace these items after the heating season to prevent interruption of the heating. The motors were replaced in early May 1940. Lack of these items did not delay useful occupancy of the buildings. Although the earlier occupancy of the buildings impeded the progress of Harney's work and caused him delay, defendant granted Harney no time extensions on that account.

29. *Increases labor claim.*—On September 15, 1941, Sullivan prepared and submitted to the War Department 11 labor claims totaling $18,996.51, which

[10] Includes $1,392 for labor not supported by documentary evidence, but found to be fair and reasonable on the evidence presented.

included $4,464.77 [11] for certain excess labor costs, involving plumbing and heating work done by Harney. After submission by the War Department to the General Accounting Office, and recommendation by the latter to Congress, Private Law No. 552, 77th Congress, was enacted and approved December 7, 1942. The Private Law authorized the Comptroller General to allow Sullivan "in full and final settlement of the claim the sum of not to exceed $14,481.87." Prior to receiving from the Comptroller General $14,481.87 pursuant to a settlement certificate, Sullivan acknowledged in writing that it would be accepted "in full and final settlement" of the labor claim. After receiving the $14,481.87 Sullivan paid Harney $4,314.16,[12] the amount deemed applicable to that part of the original labor claim relating to Harney's subcontracts and Harney accepted the same.

During performance of the contracts, the Government entered into a cost-plus-fixed-fee contract with two other contractors for certain construction at Fort Devens in proximity to the work under contracts 127 and 150. The War Department authorized for the cost-plus-fixed-fee contract a higher wage rate than the prevailing wage rate in that area as determined by the Secretary of Labor, and higher than the minimum rates specified in contracts 127 and 150. In order to prevent their employees from quitting and accepting employment at higher rates under the nearby cost-plus-fixed-fee contract, Sullivan and Harney were compelled to meet the higher wage rates, and also to pay their employees higher overtime rates on Saturdays, Sundays, and holidays to correspond to their competitor. Had Sullivan and Harney not increased their wage rates to compete in the labor market, the completion of contracts 127 and 150 would have been delayed and the national defense program would have been adversely affected. The conditions arose by reason of governmental action and were not foreseeable by Sullivan or Harney.

Senate Bill No. 982 and H. R. 1598 of the 81st Congress, which were referred to this court by Senate Resolutions 152 and 165 (see Finding 2*a*, *supra*), provided in part—

> All of the above claims are exclusive and beyond the sums of money paid by the War Department to D. A. Sullivan and Sons, Incorporated, in full and final settlement of the claims for increased labor costs for which allowance has already been made and paid to the said corporation.

In his share of the labor claim settlement, Harney received $2,006.08 less than his share of the amount originally claimed. Of this amount $78.32 was expened on certain items of extra work in the instant claim "exclusive and beyond the sums of money paid by the War Department to D. A. Sullivan and Sons, Incorporated, in full and final settlement of the claims for increased labor costs for which allowance has already been made and paid to the said corporation." The $78.32 has been included in the amounts heretofore found in the preceding findings as follows:

Finding 13	$62.91
Finding 14	2.57
Finding 24	12.84

[11] Harney actually claimed $6,320.24, but apparently Sullivan, who prepared the claim, reduced Harney's share of the labor claim to $4,464.77 in submitting it to the War Department.

[12] In auditing Harney's share of the labor claim the General Accounting Office used Harney's own detail totaling $6,320.16 in arriving at the allowable amount of $4,314.16.

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Calendar No. 493

84TH CONGRESS, 1st Session | SENATE | REPORT No. 489

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

HERBERT ROSCOE MARTIN

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3281]

The Committee on the Judiciary, to which was referred the bill (H. R. 3281) for the relief of Herbert Roscoe Martin, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 2, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Herbert Roscoe Martin, of Los Angeles, Calif., $560.64 in full settlement of his claims against the United States for hospital and medical expenses paid by him as a result of an accident, while engaged in working on the post rock crusher at Schofield Barracks, T. H., on July 1, 1940.

STATEMENT

The facts relative to H. R. 3281 as set forth in House Report No. 146, on H. R. 3281, 84th Congress, are as follows:

This claim rises out of injuries sustained by Martin as a result of an accident which took place at Schofield Barracks, T. H., while Martin was engaged in working on a post rock crusher. The accident resulted from a cable-car wreck. Martin was confined at the time in the post stockade at Schofield Barracks awaiting trial. He was performing his duty as required and was not under the influence of liquor at the time. The injuries sustained were found to be in line of duty and not the result of his own misconduct. It was found that the injury which he sustained was one which resulted from the carelessness of

Army personnel. It was concluded that a dishonorable discharge, which resulted from the trial after the time of his injury, was in error, that he needed continuous medical attention, and that he was precluded from being restored to honorable status because of his injuries. The Army Board for Correction of Military Records recommended correction for honorable separation and a certificate of honorable discharge. In accordance therewith, the Veterans' Administration considered his claim for disability compensation. However, the VA held that in changing the character of his discharge, the Board would not permit payment of retroactive money benefits.

However, the Department of the Army in considering this states that it would have no objection to the enactment of the bill if it be amended to provide for the reimbursement of the claimant for the necessary medical and hospital expenses actually incurred by him during the period between May 1, 1941, when he was released from confinement by the Army, and April 20, 1950, when he received his honorable discharge. In equity and justice, this claim should be allowed in the amount of the medical and hospital expenses, $560.64.

The sum of $560.64 as set forth in the attachments hereto, confines itself to the doctor and hospital bills incurred which, under the circumstances, the committee believes to be the proper sum of payment to the claimant.

It is therefore recommended that the bill, H. R. 3281, as amended, be considered favorably.

DEPARTMENT OF THE ARMY,
Washington, D. C., October 29, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 1157, 83d Congress, a bill for the relief of Herbert Roscoe Martin, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Herbert Roscoe Martin, of Los Angeles, California, the sum of $7,167.15. The payment of such sum shall be in full settlement of all claims of the said Herbert Roscoe Martin against the United States arising out of injuries sustained by him in a cable-car wreck at Schofield Barracks, Hawaii, on July 1, 1940, while he was engaged in working on the post rock crusher."

The records of the Department of the Army show that Herbert Roscoe Martin was born on March 23, 1919, at Gillespie, Ill. On April 1, 1937, he enlisted as a private in the Regular Army of the United States at St. Louis, Mo., for a period of 3 years, "for service in Jefferson Barracks, Mo.," and was assigned Army serial No. 6833418. At the time of his enlistment he stated that his civilian occupation had been that of laborer and that his home address was Madison, Ill. He was assigned to duty with Company G, 6th Infantry Regiment, which was then stationed at Jefferson Barracks, and he remained a member of that organization until March 18, 1938, when he was assigned to the Detachment, Medical Department, Jefferson Barracks. He continued to be assigned to said detachment until August 12, 1938, when he was honorably discharged from the service in the grade of private for the purpose of reenlisting in the Regular Army. On August 13, 1938, he reenlisted in the Regular Army as a private at Jefferson Barracks for a period of 3 years, "for service in the Medical Department, Hawaiian Department."

After his reenlistment Private Martin was sent to the Hawaiian Islands, and on October 7, 1938, he was assigned to duty with the Division Medical Detachment, Schofield Barracks, Hawaii. On November 3, 1938, he was transferred to the Station Hospital Detachment, Schofield Barracks, and on January 1, 1939, he was transferred to Company K, 27th Infantry Regiment, Schofield Barracks.

On May 12, 1939, Private Martin was convicted by a special court-martial, which convened at Schofield Barracks, of the charge of absence without leave in

violation of the 61st article of war, and of the charge of breach of arrest in violation of the 69th article of war. He was sentenced to be confined at hard labor for 3 months in the post stockade and to forfeit $14 per month of his pay for a like period of time. The sentence was executed and Private Martin returned to duty with his organization after the completion of the sentence.

On June 14, 1940, Private Martin was confined in the post stockade at Schofield Barracks to await trial on charges of housebreaking and larceny. On July 2, 1940, while he was still so confined, Private Martin, along with several other unsentenced prisoners, was detailed to work on the post rock crusher. The detail proceeded on said day to the post rock crusher, which apparently was located at the bottom of a rock quarry pit. They arrived at the rock quarry shortly after 7 a. m. At the rock quarry there was a cable-car system, extending on an incline for about 800 yards from the bottom of the rock quarry pit to the top of the pit, which cable-car system was used in hauling rocks from the bottom of the pit to the top of the quarry. The cars were raised to the top of the quarry by means of an electric hoist, and when the cars were being lowered into the pit the electric motor would be turned off, the speed of the cars being controlled by a foot brake at the top of the pit. Prior to that date workers had been lowered into the pit by riding in the cable cars. Upon arriving at the rock quarry, the sergeant in charge of the above-mentioned detail ordered the members of said detail, including Private Martin and 13 others, to get into 4 of the cable cars to be lowered into the pit. The prisoners complied with the order, and the sergeant began to lower the cars into the pit. As the cars started down the brake failed to hold properly, and the cars accelerated until reaching the estimated speed of 40 or 50 miles per hour when they crashed at the bottom of the pit, throwing a number of the prisoners from the cars upon the ground. Private Martin was severely injured. He was removed to the station hospital, Schofield Barracks, at about 9:45 a. m. on the same day, when his injuries were diagnosed as follows:

"1. Fracture, simple, complete, transverse, severe, junction of upper and middle thirds, left humerus.

"2. Fracture, simple, complete, oblique, severe, lower third, tibia and fibula, left.

"3. Fracture, simple, incomplete, 0.7 cm. long, left parietal bone.

"4. Concussion, cerebral, severe.

"5. Wound, contused, moderate, ear and mastoid region, left.

"6. Wound, contused, severe, left lumbar region."

A board of officers appointed to investigate the circumstances connected with the injury of Private Martin found that this soldier was in confinement awaiting trial and was performing duty under the supervision of a prison officer at the time of his injury; that he was not under the influence of intoxicating liquor or narcotics at the time of his injury; and that the injury of this soldier "was incurred in line of duty and not the result of his own misconduct."

Private Martin was confined in the station hospital at Schofield Barracks from July 2, 1940, until December 31, 1940, undergoing treatment for the injuries sustained by him in the aforesaid accident.

On September 17, 1940, Private Martin was placed on trial before a general court-martial upon the charges of housebreaking and larceny in violation of the 93d article of war. The evidence in the case showed that at about 11 p. m. on June 11, 1940, Private Martin accompanied a certain civilian to a privately owned building in Honolulu; that said civilian entered said building and took therefrom a rug and a lamp shade of a total value of about $25; that the civilian passed said 2 articles to Private Martin, who then helped the civilian carry them away to the civilian's house; and that the owner of the 2 articles in question later recovered them. Private Martin was found guilty by the general court-martial of both charges and he was sentenced to be dishonorably discharged from the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for 1 year and 6 months. The sentence was approved by the convening authority, except that 9 months of the sentence to confinement were remitted. Private Martin was dishonorably discharged from the Army on November 12, 1940.

On February 4, 1941, while this former soldier was serving his sentence, he was again admitted to the station hospital at Schofield Barracks where his condition was diagnosed as follows:

"Bursitis, chronic, suppurative, left heel, posterior achilles tendon; due to fracture, simple, complete, oblique, severe, lower third, tibia and fibula, left; accidentally incurred July 2, 1940, at the rock quarry, Schofield Barracks, T. H."

On February 5, 1941, this prisoner was operated on for the excision of the bursa. He remained a patient under treatment at the station hospital at Schofield

Barracks until March 19, 1941. On April 9, 1941, he was examined at the station hospital at Fort McDowell, Calif., because of a throbbing pain in the lower portion of his left leg, which resulted from his old injuries, and he was confined to quarters until April 11, 1941. Mr Martin was released from confinement at Fort Jay, N. Y., on May 1, 1941, following the completion of his sentence.

While in confinement on January 30, 1941, Mr. Martin made application to The Adjutant General of the Army that he be restored to an honorable duty status in the Army, which application was denied. On March 3, 1943, the War Department authorized the induction of Mr. Martin into the Army, provided that his current civil record was good and that he could otherwise qualify for induction. On March 11, 1944, local board No. 1, Granite City, Ill., stated that Mr. Martin had been rejected for military service because he was "physically disqualified for military service by reason of old malunited fractures left ilium, with marked deformity."

On July 4, 1949, Mr. Martin transmitted to the Department of the Army his application for the review of his case by the Army Board for Correction of Military Records, in which he requested that he be granted an honorable discharge from the United States Army. This Board was established pursuant to the provisions of section 207 of the Legislative Reorganization Act, approved August 2, 1946 (60 Stat. 812, 837; 5 U. S. C. 191a), and it operates under the authority of that statute, as amended by the act of October 25, 1951 (65 Stat. 655). The purpose of the Army Board for Correction of Military Records is to correct any military record, where, in the judgment of the Board, such action is necessary to correct an error or to remove an injustice. The Board met on January 4, 1950, to consider the merits of the application of Mr. Martin, and, after a careful consideration of the pertinent facts and circumstances in the case, it found—

"1. That the applicant has previously exhausted all remedies afforded him by existing law or regulations.

"2. That, while in confinement awaiting general court-martial trial, applicant was seriously and permanently injured due to the carelessness of Army personnel; that a board of officers found his injuries to have been incurred in line of duty and not due to his own misconduct, prior to trial; that at time of trial applicant was still unrecovered from his injuries although the trial had been postponed for 3 months, due to his physical condition.

"3. That applicant was sentenced to be dishonorably discharged, to be confined at hard labor for 1 year, 6 months, and with total forfeitures of pay and allowances for violation of 96th [93d] article of war; that applicant's period of confinement was ultimately reduced to 9 months, the major portion of which was spent in the hospital.

"4. That the execution of applicant's sentence to be dishonorably discharged was in error and unjust in view of the severity of his injuries, need for continuous medical attention, his previous honorable and excellent service, and that honorable restoration was precluded by these injuries. That charges were dropped against another prisoner also awaiting trial who lost a leg in the same accident.

"5. That the effects of the injustice of the dishonorable discharge are evident in that applicant is precluded from receiving Veterans' Administration benefits, medical care and hospitalization, of which he has been in need and should be entitled from the Government for the injuries received and disabilities resulting therefrom."

The Board recommended as follows:

"1. That all the Department of the Army records of former Private Herbert R. Martin RA6833418, be corrected to show him honorably separated on November 12, 1940, from the United States Army, by reason of certificate of disability for discharge for injuries incurred in line of duty on or about July 2, 1940, not due to his own misconduct.

"2. That the Department of the Army issue to former Private Herbert R. Martin, RA6833418, a certificate of honorable discharge from the United States Army dated November 12, 1940, by reason of certificate of disability for discharge, for injuries incurred in line of duty on or about July 2, 1940, not due to his own misconduct, in lieu of the dishonorable discharge certificate dated November 12, 1940."

On February 17, 1950, the Secretary of the Army approved the above-quoted recommendations of the Army Board for Correction of Military Records. Thereafter on April 18, 1950, the Department of the Army transmitted to Mr. Martin an honorable discharge from the United States Army, effective November 12, 1940, by reason of a certificate of disability for discharge.

The Department of the Army has been advised by the Veterans' Administration that Mr. Martin filed a claim for disability compensation on December 15, 1944, which claim was disallowed on February 24, 1945, by reason of the claimant's dishonorable discharge from the Army on November 12, 1940; that on April 20, 1950 (after the claimant had received an honorable discharge from the Army, effective November 12, 1940), he filed a request with the Veterans' Administration that his claim for disability compensation be reopened; that thereafter the Veterans' Administration granted compensation to the claimant in the amount of $36 per month upon a rating of 30 percent disability, retroactively to January 4, 1950 (the date of the aforementioned action of the Army Board for Correction of Military Records); that he was paid compensation in that amount through June 30, 1952; and that effective July 1, 1952, the compensation of the claimant was increased to $37.80 per month, and has since continued at that rate. The Veterans' Administration has further advised that—

> "Prior to the change in the character of the veteran's discharge, he also requested that he be reimbursed for certain medical and hospital expenses which he had incurred subsequent to the date of his discharge from service, in connection with the treatment of the injuries incurred in service. This request was also denied by the Veterans' Administration because of the character of his discharge. Following the action by the Army Board [For Correction of Military Records], Mr. Martin filed a formal claim with the Veterans' Administration for reimbursement of the medical and hospital expenses which he had incurred through 1949. Although the precise amount claimed is not entirely clear, the evidence of record indicates that the total expenses of this nature alleged by Mr. Martin amount to roughly $700. By letter dated March 22, 1951, his claim for reimbursement of unauthorized medical expenses was denied, and subsequently, the veteran filed an appeal. The Board of Veterans' Appeals in a decision dated February 29, 1952, denied the appeal holding that the Army Board's action in changing the character of Mr. Martin's discharge did not permit payment of retroactive monetary benefits since authority therefor was not provided by statute, and accordingly concluded that reimbursement could not be made for unauthorized medical and hospital expenses incurred prior to the change in the character of discharge."

The bill, H. R. 1157, proposes to pay to Mr. Martin the sum of $7,167.15 "in full settlement of all claims of the said Herbert Roscoe Martin against the United States arising out of injuries sustained by him in a cable-car wreck at Schofield Barracks, Hawaii, on July 1 [2], 1940, while he was engaged in work on the post rock crusher." If this bill were enacted in its present form it would require the Veterans' Administration to discontinue the payment of disability compensation to the claimant, and it would also deny to him any future benefits predicated upon said injuries. The Department of the Army is opposed to the enactment of this bill in its present form. The Department, however, would have no objection to the enactment of the bill if it should be so amended as to provide only for the reimbursement of the claimant for the necessary medical and hospital expenses actually incurred by him during the period between May 1, 1941 (when he was released from confinement by the Army) and April 20, 1950 (when he received his honorable discharge from the Army). In equity and justice the claimant is entitled to be reimbursed in the amount of such expenses inasmuch as his injury on July 2, 1940, has been officially determined to have been caused solely by "the carelessness of Army personnel" while in the performance of official duty. There is no method by which the claimant may be reimbursed for said expenses except through the enactment by the Congress of a special relief bill for his benefit.

The Department of the Army has received no evidence showing the amount of the medical and hospital expenses actually incurred by Mr. Martin on account of the injuries sustained by him on July 2, 1940, and it appears that the precise amount of such expenses has not been submitted by the claimant to the Veterans' Administration. It is, therefore, recommended that action on this bill be suspended by the Committee on the Judiciary until after the claimant has submitted to the committee evidence showing the necessary medical and hospital expenses actually incurred by him during the period from May 1, 1941, to April 20, 1950, as the result of his injury on July 2, 1940.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

Los Angeles 41, Calif., *October 14, 1952.*

The Honorable Norris Poulson, M. C.
Congress of the United States,
House of Representatives, Washington, D. C.

Dear Sir: I am in receipt of your letter of September 29, 1952. I was really glad to know that some interest was shown in your office.

In regard to the letters I sent you, you may keep them as long as you see fit. I would just like to have them back after you are finished with them.

I was told by the Veterans' Administration that any time a Congressman wants anything from their files, they are at his disposal upon his request. In case you need my files, they are in the Los Angeles Regional Office of the Veterans' Administration. My claim number is C-45-900-23. My Army serial number is 6833418.

As requested in your letter, here is an itemized list of bills I feel are due me:

1941

Dr. Anderson, St. Louis, Mo., treatment for abscess of my left side	$10.00

1944

Dr. Young, St. Louis, Mo., treatment for a fever which he thought was a cold	5.00
I didn't get any better, so I saw a Dr. Weiss who referred me to a Dr. Keyes	3.00
Dr. Keyes sent me to Barnes Hospital in St. Louis for an emergency operation, which was due to osteomyelitis. Dr. Keyes' bill was unpaid	100.00
Barnes Hospital bill was	87.00
After I got out of the hospital, Dr. Keyes wanted X-rays, which was	10.00

1945

Dr. Schermer, of Grant City, Ill., operated on me for an abscess of the left side at the St. Elizabeth Hospital	25.00
The St. Elizabeth Hospital bill was	67.30

1947

The Wilshire Hospital of Los Angeles, Calif: I took penicillin shots for osteomyelitis	55.85

1949

Los Angeles General Hospital, Los Angeles, Calif. Operated on for osteomyelitis. Bill unpaid	198.49
Hospital and doctor bills I have paid	262.15
Outstanding bills for Dr. Keyes and the Los Angeles County Hospital are	298.49

For the items that weren't returned to me by the Army when I was taken to the stockade in June of 1940:

1 portable radio	$35
1 camera	15
Civilian clothing, such as pants, shoes, jacket, etc	25
Total	75

After the first several days in the station hospital at Schofield Barracks, T. H., the commanding officer of the Hawaiian Division came to see the men who were in the cable car wreck. He stopped at my bed, at which time my left arm and leg were in a sling and my left side was broken open and draining. He told me to stop worrying and get well, to take care of myself and the Army would take care of me and that charges against me were being dropped. A little later the guards were taken away.

About 2 months later an officer came to the hospital and told me he was to defend me in a court martial and within a week I was under guard again. I was to find later that the company I was in had a new company commander and I was being made an example of. September 17, 1940, I was tried and given 18 months and a dishonorable discharge. My sentence was later reduced to 1 year, with

good time made at 10 months. Most of this time was spent in the hospital. What time wasn't, I was marked "Quarters" to the day of my release at Fort Jay, N. Y., at which time my left side and heel were still draining. At that time I was told that I was to be held for convenience of the Government until my left side healed. I was to be held at a prisoner's status, which meant—no pay. I was told that if I would sign a waiver the Government would release me. I have learned that waivers aren't recognized by the Government.

I feel that under these conditions I should have received my pay for June 1940 through May 1, 1941, when I was released from the Army at Fort Jay	$325
Since I enlisted in the Army on Apr. 1, 1937, the only furlough time I received was 17 days for travel time to catch the boat for Hawaii. I was supposed to be entitled to 30 days per year	75
Clothing allowance	100

I was released from Fort Jay, N. Y., May 1, 1941, with my left side drained. I requested medical attention several times from the Army and the Veterans' Administration, but was refused due to the type of discharge I was holding. I was allowed 30 percent disability since 1950, but through 1941 to 1950 I was in the hospital 4 times, the doctor care was 5 times, so I feel that during this period I should have been drawing at least 50 percent disability. That would be $60 per month at peacetime disability.

1941	$480.00
1942	720.00
1943	720.00
1944	720.00
1945	720.00
1946	720.00
1947	720.00
1948	720.00
1949	720.00
1950	90.00
Total of disability I feel is due	6,330.00
Doctor and hospital bills	560.64
Personal belongings and clothing not returned to me	75.00
Army pay	325.00
Furlough time	75.00
Clothing allowance	100.00
Disability pay	6,330.00
Subtotal	7,465.64
Less amount due Dr. Keyes and the Los Angeles County Hospital	298.49
Total	7,167.15

I hope this itemized list will be helpful in placing may claim before the committee I want to thank you for your time and consideration shown in this case.

Respectfully yours,

HERBERT ROSCOE MARTIN.

LOS ANGELES 41, CALIF.,
September 24, 1952.

Hon. NORRIS POULSON,
House of Representatives, Washington, D. C.

DEAR SIR: I was in the Army on July 1, 1940 stationed at Schofield Barracks, T. H., at which time I was confined to the post stockade awaiting trial for general court martial. On this date I was detailed to work on the post rock crusher. When I arrived at the rock crusher we were ordered into cable cars to be lowered into the bottom part of the gulch. Halfway down the gulch the cars jumped the track, and I was injured—broken arm and broken leg, fractured hip and about a 9 inch hole in my side. I was in the station hospital for over 7 months. I was released from the Army on May 1, 1941, at Fort Jay, N. Y.

Since that time I have been in the hospital during 1944, 1945, 1947, and 1949—for a week or 2 and more at a time, and in 1949 was under a doctor's care for 3

months. The Veterans' hospital rejected me because of a dishonorable discharge—which discharge was rectified in 1950 to honorable discharge, "Reason and authority for separation—certificate of disability for discharge."

The Veterans' Administration has compensated me for my disabilities since 1950—the date of honorable discharge issuance. However, they have allowed me nothing since the date of my release on May 1, 1941—until they rectified the discharge papers in 1950.

I have sent the bills from the different hospitals to the Veterans' Administration, on which they refused payment because of the type of discharge which was issued on September 17, 1940—"dishonorable".

I paid Barnes Hospital $87 (St. Louis); Wilshire Hospital, Los Angeles, $55.85; St. Elizabeth Hospital, Granite City, Ill., $67.30; Dr. Schermer of Granite City, Ill., $25; and I still owe Dr. Alfred Key of St. Louis, Mo., $100; and to the Los Angeles General Hospital, $198.49.

I feel I should be reimbursed for moneys I have already paid and those not paid should be taken care of by the Government.

Due to my disabilities, osteomyelitis—I have lost considerable time from work and have suffered much pain, and I have felt justified in asking that these bills be paid by the Government and that I should be compensated for the years between 1941 and 1950. I have received no compensation for disabilities incurred in 1940 while in the Army during those years, as they advised that there is no law set up for such compensation.

I was called in the draft in 1943 but the draft board rejected me because "Not fit for military duty due to recent (in last 5 years) osteomyelitis and malformation of wing of left ilium," which injuries were received while I was in the service.

I was informed by the Disabled Veterans of America that I should write to my Congressman, and I have therefore written this to you for your consideration and help.

Thanking you for your consideration of my case, and looking forward to a favorable decision, I am

Respecfully yours,

HERBERT ROSCOE MARTIN.

P. S.—On May 27, 1952, I was informed by the Army that I was entitled to $39.75 as credits—with deductions, making it $25.15, asking me to sign release, which I have not done—as I feel it is out of the question. As of June, 1940, they owed me $67 clothing allowance and 3 months' pay until my time of trial. When I went to the stockade they took my property away from me, such as civilian clothes, a Zenith radio and a camera. I have never received these from the Army nor have I been compensated for them.

I am enclosing papers to verify all statements that I have made. Please read these carefully and return them to me after they have served their purpose.

H. R. M.

LOS ANGELES 41, CALIF., *June 18, 1954.*

Hon. G. P. LIPSCOMB,
24th District California,
House of Representatives, Washington, D. C.

DEAR SIR: In answer to your letter of June 9, 1954. In regards to by bill H. R. 1157, which the chairman of the subcommittee requested an affidavit of hospital and doctor expenses incurred by me due to the cable car mishap which occurred in 1940, to the time my discharge was changed in 1950.

Mr. Poulson presented my case, in which I sent all the bills and listed all hospital and doctor bills which I believed I had notaried. So the best I can do is to list them from memory. Hoping that will fulfill his request.

1942. Dr. Anderson, of St. Louis, Mo.: Treated me to a series of drainage treatment to the left side due to osteomyelitis	$10
1944. Dr. Young, of St. Louis, Mo.: Refer me to Dr. Weiss for further treatment	3
Dr. Weiss treated me but said he couldn't operate and send me to Dr. Keyes	2
Dr. Keyes had me admitted to the Barnes Hospital and operated and gave me a series of treatment for osteomyelitis	100
Barnes Hospital, St. Louis, Mo	87
1945. Dr. Schmer, of Granite City, Ill., had me admitted to the St. Elizabeth and operated later treatment for osteomyelitis	25
St. Elizabeth Hospital	67
1946. Wilshire Hospital of Los Angeles, Calif. gave me treatment for osteomyelitis	55
1949. Los Angeles General, of Los Angeles, Calif. operated and gave me a series of treatments for osteomyelitis	198
1944. Dr. Keyes had some X-rays taken after the operation	10

This, sir, is the best I can remember. Hoping it will be noted that considerable time was lost from work and much pain suffered.

Thanking you for your time and interest shown in this case

I remain yours,

HERBERT R. MARTIN.

Subscribed and sworn to before me this 19th day of June 1954.

[SEAL] JANE DOUGH,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires October 14, 1957.

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Calendar No. 494

84TH CONGRESS, 1st Session } SENATE { REPORT No. 490

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

LOUIS ELTERMAN

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3958]

The Committee on the Judiciary, to which was referred the bill (H. R. 3958) for the relief of Louis Elterman, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 11, and page 2, line 1, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the sum of $179.17 to Louis Elterman, of Boston, Mass., in full satisfaction of all his claims against the United States for reimbursement of expenses incident to the transfer and storage of his personal effects from Eatontown, N. J., to Boston (West Roxbury), Mass.

STATEMENT

Records of the Department of the Air Force disclose that the claimant is a civilian employee of the Department of the Air Force and moved from Eatontown, N. J., to Boston (West Roxbury), Mass., under an officially ordered change of duty station. The payment of these moving expenses to the claimant is barred by administrative order, by a provision of Executive Order 9805, which requires that the movement of household goods be accomplished within 2 years from the effective date of the change of duty station. The Department of the Air Force states that due to the exigencies of the claimant's

work, which required him to be in Albuquerque, N. Mex., on a temporary duty status for 2 years, he was unable to move his household goods until after the expiration of the 2 years from the effective date of his transfer.

The Department of the Air Force recommends favorable consideration of the proposed legislation.

The committee is of the opinion that this bill be favorably considered, in view of the fact that the claimant was unable to move his household goods until after the expiration of the 2 years because of orders from the Air Force. The committee thinks that it would be inequitable to deprive this employee of moving expenses, which he would have been otherwise entitled to had it not been for the action of the Department in placing him on temporary duty status for 2 years. The committee, therefore, recommends favorable consideration of H. R. 3958, as amended.

Attached hereto and made a part hereof is the report of the Department of the Air Force submitted in connection with an identical bill of the 83d Congress.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, August 3, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your request for the comments of the Department of the Air Force on H. R. 8695, a bill for the relief of Louis Elterman.

The bill, if enacted, would compensate Mr. Louis Elterman in the amount of $179.17 for expense incurred in the movement of his household goods from Eatontown, N. J., to Boston, Mass. Mr. Elterman is a civilian employee of the Department of the Air Force and the move was necessitated by an officially ordered change of duty station. Payment, administratively, is barred by a provision of Executive Order 9805 which requires that the movement of household goods be accomplished within 2 years from the effective date of the change of duty station. Because of exigencies of his work which required Mr. Elterman to be in Albuquerque, N. Mex., on a temporary duty status for 2 years, he was unable to move his household goods until after the expiration of 2 years from the effective date of his transfer.

The Department of the Air Force recommends enactment of H. R. 8695.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

HAROLD E. TALBOTT.

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Calendar No. 495

84TH CONGRESS, 1st Session } SENATE { REPORT No. 491

JUN 16 1955
LAW LIBRARY

ORRIN J. BISHOP

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4249]

The Committee on the Judiciary, to which was referred the bill (H. R. 4249) for the relief of Orrin J. Bishop, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 9, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Orrin J. Bishop, of Presque Isle, Maine, of all liability to refund to the United States the sum of $858.82, representing the amount of certain overtime payments which the claimant (as postmaster in Presque Isle, Maine) made without legal authority to one of his employees for certain services performed during the June, September, and December quarters of 1951, and for which the claimant has been held personally liable.

STATEMENT

The report of the Postmaster General discloses that the claimant, Orrin J. Bishop, was postmaster of the first-class office at Presque Isle, Maine. On May 4, 1951, because of ill health, 1 of the 2 firemen employed by that post office resigned. Because no replacement for the resigned employee could be obtained, the postmaster requested the remaining fireman-laborer, Mr. Frederick M. Moreau, to perform services for more than 8 hours per day, for a total of 4 hours. Mr.

Moreau was also requested to perform services on Saturdays, Sundays, and holidays, which services totaled 413 hours. These services were performed during the June, September, and December quarters of 1951, and the postmaster paid Mr. Moreau at the overtime rate for all overtime services performed.

Under the provisions of sections 2 and 3 of Public Law 134, 79th Congress, approved July 6, 1945, as amended (39 U. S. C. 853, 854), overtime compensation may be paid to certain employees for services performed on Saturdays, Sundays, and Christmas Day during the month of December. Overtime compensation must be paid to certain employees for services performed in excess of 8 hours per day. For services performed by these employees on Saturdays, Sundays, and holidays in months other than December, however, compensatory time off must be allowed. Mr. Moreau was in one of the categories of employees to which the provisions of law are applicable. The provisions of law were embodied in published departmental regulations during the period the overtime services were performed by Mr. Moreau.

In commenting on the facts as stated above, the Postmaster General states as follows:

> In view of the foregoing facts and the law applicable thereto, this Department deducted from the postmaster's terminal leave settlement at the time of his retirement the sum of $866.23. Of this amount, $7.41 is properly allowable in the account of the postmaster for payments made by him to Mr. Moreau for services performed in excess of 8 hours per day. The remainder, $858.82, was disallowed because it represents overtime compensation improperly paid to Mr. Moreau by Mr. Bishop for overtime services performed on Saturdays, Sundays, and holidays in months other than December. It is this last amount for which relief should be provided, if the purposes of this bill are to be achieved.
>
> Since (1) the postmaster was faced with an emergency situation wherein certain work had to be performed; (2) a replacement for the retired employee was not readily obtainable, but a replacement was recruited as expeditiously as possible; and (3) the Government has received the benefit of Mr. Moreau's services this Department would interpose no objection to the enactment of this legislation, if it is amended to state the proper amount for which relief should be granted.

The committee, after a study of the facts, is constrained to agree with the conclusions reached by the Postmaster General and his recommendation on this legislation. It is, therefore, recommended that the bill, H. R. 4249, be considered favorably.

Attached hereto and made a part hereof is the above-referred-to report of the Postmaster General.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., June 29, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a report on H. R. 8110, a bill for the relief of Orrin J. Bishop.

The records of this Department indicate that the amount of money involved in the situation described in the bill is $858.82 instead of $761.14 as therein provided.

At the first-class post office at Presque Isle, Maine, of which Mr. Orrin J. Bishop was postmaster during the time covered by the circumstances related in the measure, 1 of the 2 firemen-laborers resigned for reasons of health on May 4, 1951. Because of the fact that no replacement for the retired employee could be obtained, the postmaster requested the remaining fireman-laborer, Mr. Frederick M. Moreau, to perform services for more than 8 hours per day, for a total of

4 hours. Mr. Moreau was also requested to perform services on Saturdays, Sundays, and holidays, which services totaled 413 hours. All of the foregoing services were performed during the June, September, and December quarters of 1951. The postmaster paid Mr. Moreau at the overtime rate for all overtime services performed.

Under the provisions of sections 2 and 3 of Public Law 134, 79th Congress, approved July 6, 1945, as amended (39 U. S. C. 853, 854), overtime compensation may be paid to certain employees for services performed on Saturdays, Sundays, and Christmas Day during the month of December. Overtime compensation must be paid to certain employees for services performed in excess of 8 hours per day. For services performed by these employees on Saturdays, Sundays, and holidays in months other than December, however, compensatory time off must be allowed. Mr. Moreau was in one of the categories of employees to which the provisions of law are applicable. The provisions of law were embodied in published departmental regulations during the period the overtime services were performed by Mr. Moreau.

In view of the foregoing facts and the law applicable thereto, this Department deducted from the postmaster's terminal leave settlement, at the time of his retirement, the sum of $866.23. Of this amount, $7.41 is properly allowable in the account of the postmaster for payments made by him to Mr. Moreau for services performed in excess of 8 hours per day. The remainder, $858.82, was disallowed because it represents overtime compensation improperly paid to Mr. Moreau by Mr. Bishop for overtime services performed on Saturdays, Sundays, and holidays in months other than December. It is this last amount for which relief should be provided, if the purposes of this bill are to be achieved.

Since (1) the postmaster was faced with an emergency situation wherein certain work had to be performed; (2) a replacement for the retired employee was not readily obtainable, but a replacement was recruited as expeditiously as possible; and (3) the Government has received the benefit of Mr. Moreau's services this Department would interpose no objection to the enactment of this legislation, if it is amended to state the proper amount for which relief should be granted.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to the committee.

Sincerely yours,

ARTHUR E. SUMMERFIELD,
Postmaster General.

Calendar No. 496

84TH CONGRESS, 1st Session | SENATE | REPORT No. 492

JUN 16 1955
LAW LIBRARY

THEODORE J. HARRIS

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4714]

The Committee on the Judiciary, to which was referred the bill (H. R. 4714) for the relief of Theodore J. Harris, having considered the same, reports favorably thereon, with an amendment and recommends that the bill, as amended do pass.

AMENDMENT

On page 2, immediately following line 8, add the following language:

Provided, however, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE

The purpose of the proposed legislation is to relieve Theodore J. Harris of all liability to refund to the United States the sum of $257.01 which represents compensation received by Harris for overtime service performed from February to April 1951 with full credit given for the amount which liability is relieved by the act in the audit and settlement of the accounts of any disbursing officer of the United States.

STATEMENT

A similar bill, S. 3104 of the 83d Congress, 2d session, introduced at the request of the Acting Postmaster General was reported favorably from this committee on July 19, 1954, passed the Senate with a floor

amendment, August 11, 1954, and was referred to the House Judiciary Committee.

The pertinent facts relating to this bill are as follows:

Theodore J. Harris was the regular fireman-laborer at the Rockville, Md., post office. On January 22, 1951, one of the charmen at this post office quit without giving previous notice and it became necessary to employ Mr. Harris in this position until someone could be secured to fill the vacancy.

Mr. Harris was told to, and did perform services during the period from February to April 1951, inclusive, and was paid for these services as a charman at the overtime rate.

Later, the audit office of the Bureau of the Comptroller disallowed the aggregate sum paid to Mr. Harris because payment had been made in violation of Public Law 134, 79th Congress, 1st session, which, with the exception of the month of December, provides for payment of overtime to custodial employees only for the first 8 hours of service performed on Saturdays, Sundays, and holidays,.

Investigation revealed that in obtaining authority to hire Mr. Harris the postmaster, while the law was explained to him, did not correctly understand it.

After payment was disallowed, Mr. Harris repaid $120 at the rate of $20 per month. He then advised the authorities it was impossible to make further payments because of the hardship such payments imposed upon himself, his wife, and five children.

The Post Office Department recommends enactment of this bill. The Bureau of the Budget makes no objection. Therefore, and by reason of the further fact that the Post Office had the benefit of Mr. Harris' services, and that the mistake is in no way attributable to Mr. Harris, the committee recommends that this bill, H. R. 4714, be reported favorably.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., February 2, 1954.

Hon. RICHARD M. NIXON,
President of the United States Senate.

DEAR MR. PRESIDENT: There is transmitted herewith for consideration by the Congress proposed legislation for the relief of Theodore J. Harris. The need for this legislation arose out of the following facts.

Pursuant to the provisions of section 3 of Public Law 134, 79th Congress, approved July 6, 1945, as amended, compensatory time must be granted to per annum custodial employees for the first 8 hours of service performed on Saturdays, Sundays, and holidays except during the month of December.

One of the charmen at the Rockville, Md., post office resigned on January 22, 1951, without having given previous notice. The postmaster at Rockville advised the Department that it would be necessary to employ the regular fireman-laborer in overtime status until someone could be employed to fill the vacated position.

The postmaster was advised that he might authorize overtime employment for Mr. Harris, but at the time this advice was given it was based upon the understanding that the overtime authorization was to be used to pay for services performed in excess of 8 hours per day in accordance with the provisions of existing law.

However, because of the fact that the postmaster at Rockville was unaware of the understanding upon which the authorization was based, Mr. Harris was told to, and did, perform services on Saturdays and Sundays during the period February to April 1951, inclusive, and was paid for these services at the overtime rate.

Subsequently, the aggregate sum of money paid to Mr. Harris was disallowed by the audit office of the Bureau of the Comptroller on the ground that such payment

was in violation of section 3 of Public Law 134. Mr. Harris was advised of this fact and was told to repay the money which he had received as compensation for overtime services. Mr. Harris repaid $120 at the rate of $20 per month, and then advised that further payments could not be made because of the hardship caused thereby to himself, his wife, and their 5 children.

The total cost which would result from the enactment of this proposal is $257.01.

In view of the fact that (1) the postal service has received the benefit of the services of Mr. Harris; (2) a regular employee was obtained as soon as possible; and (3) the employment of Mr. Harris resulted from a misunderstanding; and in view of the financial burden which would be placed upon Mr. Harris and his family, this Department recommends the enactment of legislation to relieve Mr. Harris of liability in this case.

It is believed that the legislation submitted herewith will accomplish the purpose desired, and its early enactment is recommended.

The Bureau of the Budget has advised that there would be no objection to the submission of this legislative proposal to Congress.

Sincerely yours,

CHARLES R. HOOK, Jr.,
Acting Postmaster General.

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Calendar No. 497

84TH CONGRESS, 1st Session } SENATE { REPORT No. 493

UNIV. OF MICH.
JUN 16 1955
LAW LIBRARY

HUSSEIN KAMEL MOUSTAFA

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1069]

The Committee on the Judiciary, to which was referred the bill (H. R. 1069) for the relief of Hussein Kamel Moustafa, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 6, after the comma insert the words "of Los Angeles, California,".
2. On page 1, line 10, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay the sum of $500 to Hussein Kamel Moustafa, of Los Angeles, Calif., in full settlement of all his claims against the United States as reimbursement for bond posted for himself on October 4, 1948.

STATEMENT

Information contained in the files of the Department of Justice disclose that the claimant was admitted to the United States on May 23, 1947, as a visitor for pleasure pursuant to section 3 (2) of the Immigration Act of 1924 (8 U. S. C. 203). After several extensions of stay, on October 4, 1948, a $500 bond was furnished by the alien to guarantee his departure from the United States on or before January 15, 1949.

The claimant did not depart from the United States within the allotted time and he thereby became subject to deportation. Subsequently, his deportation was suspended under authority of section 19 (c) of the Immigration Act of 1947, as amended (8 U. S. C. 155). The claimant's status was later adjusted to that of a permanent resident, retroactive to date of entry.

On January 4, 1952, the bond was declared breached by the district director of immigration and naturalization at Los Angeles, Calif., and the breach was affirmed on appeal. On February 29, 1952, the collateral which had been deposited was converted and the proceeds deposited in the United States Treasury.

The Department of Justice, in reporting on the bill, states that in view of the circumstances of this case that Department finds no objection to the enactment of the proposed legislation.

The committee is of the opinion that the claimant should be reimbursed for the amount of bond posted, inasmuch as the United States did not suffer any financial damages as a result of the failure of the alien to depart within the time specified, due to the fact that the alien was granted permanent residence retroactively to the date of his admission to this country and prior to the date of the breach of the bond. The committee, therefore, recommends favorable consideration of H. R. 1069, as amended.

Attached hereto and made a part hereof is the report of the Department of Justice and other evidentiary data relating to this claim on an identical bill of the 83d Congress.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 30, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 9128) for the relief of Hussein Kamel Moustafa.

The bill would authorize and direct the Secretary of the Treasury to pay the sum of $500 to Hussein Kamel Moustafa "in full settlement of all claims against the United States as reimbursement for bond posted for himself on October 4, 1948."

Mr. Moustafa was admitted to the United States on May 23, 1947, as a visitor for pleasure pursuant to section 3 (2) of the Immigration Act of 1924 (8 U. S. C. 203). After several extensions of stay, on October 4, 1948, a $500 bond was furnished by the alien to guarantee his departure from the United States on or before January 15, 1949.

Mr. Moustafa did not depart from the United States within the allotted time and he thereby became subject to deportation. Subsequently the alien's deportation was suspended under authority of section 19 (c) of the Immigration Act of 1947, as amended (8 U. S. C. 155). Mr. Moustafa's status was later adjusted to that of a permanent resident, retroactive to date of entry.

On January 4, 1952, the bond was declared breached by the district director at Los Angeles, Calif., and the breach was affirmed on appeal. On February 29, 1952, the collateral which had been deposited was converted and the proceeds deposited in the United States Treasury.

In view of the circumstances of this case, the Department of Justice finds no objection to the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Luca G. Kamel being first duly sworn deposes and says:

That Hussein Kamel Moustafa is affiant's father; that your affiant's father arrived in the United States on May 23, 1947, at New York City, N. Y., on the steamship *Marine Carp*, and was admitted on a visitor's visa.

That while affiant's father was visiting affiant's sister, an American citizen, he took seriously ill. On December 1, 1947, file No. 0300–202083, ST. N, he was granted an extension by the Immigration and Naturalization Service, 70 Columbus Avenue, New York 23, N. Y., to May 23, 1948. Thereafter a further extension was granted to January 15, 1949.

On October 7, 1948, in file No. 1600–48910, at Los Angeles, Calif., your affiant deposited United States Treasury bond 1967–72 series, coupons Nos. 6 to 54, inclusive, for $500, commencing December 15, 1948, 2½ percent serial No. 1538 J, December 15 and June 15, with the Immigration and Naturalization Service, and receipt for same was issued by Marshall E. Kidder, acting district adjudication officer for and on behalf of Hussein Kamel Moustafa, that he would depart the United States when ordered to do so. On January 15, 1949, Hussein Kamel Moustafa was too ill to leave the United States and on February 27, 1950, he was again called for an interview, and on July 11, 1950, he filed an application for adjustment of status as a displaced person, file No. DP 6321. This file was never acted upon and at no time did the Immigration and Naturalization Service order Hussein Kamel Moustafa to depart the United States

Thereafter, on October 13, 1950, a warrant for arrest of alien was issued by the Department by H. R. Landon, district director at Los Angeles, Calif.

Thereupon, an application was filed for suspension of deportation. This application was acted upon favorably by the Immigration and Naturalization Service, file No. A–6888048 on or about September 4, 1951, when the assistant commissioner, adjudication division, at Los Angeles, Calif., ordered as follows: "It is *"Ordered*, That the deportation of the alien be suspended under the provisions of section 19 (c) (2) of the Immigration Act of 1917 as amended; and it is further *"Ordered*, That if Congress approves the suspension of the alien's deportation the proceedings be canceled and the alien, if a quota immigrant at the time of entry and not then charged to the appropriate quota, be so charged as provided by law."

On January 17, 1952, the district director at Los Angeles, Calif., notified Hussein Kamel Moustafa that deportation had been suspended in his case, which action would be reported to Congress pursuant to section 19 (c) (2) of the Immigration Act of 1917 as amended.

Thereafter, in June of 1953, Congress approved the Order of the Immigration and Naturalization Service, and on June 23, 1953, the sum of $18 was paid to open a file, and on September 18, 1953, an alien registration receipt card was delivered to Hussein Kamel Moustafa.

Because Hussein Kamel Moustafa did not depart from the United States on January 15, 1949, on February 29, 1952, after the district director had notified Hussein Kamel Moustafa the deportation had been suspended in his case, the collateral which had been deposited as security by Luca G. Kamel was converted and the proceeds deposited in the United States Treasury.

That affiant requests that the said $500 be paid from the United States Treasury to him, in view of the fact that the same was wrongfully converted.

LUCA G. KAMEL.

Subscribed and sworn to before me this 21st day of May 1954.

[SEAL] BERTRAM S. HARRIS,
Notary Public in and for the said County and State.

Calendar No. 498

84TH CONGRESS, 1st Session } SENATE { REPORT No. 494

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

J. B. PHIPPS

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1416]

The Committee on the Judiciary, to which was referred the bill (H. R. 1416), for the relief of J. B. Phipps, having considered the same, reports favorably thereon, with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 11, following the word "*Provided,*" insert the following:

That no part of the amount provided for in this Act shall be subject to any claim or reimbursement to any insurance company, or compensation insurance fund, which may have paid any amount to the claimant herein, by reason of the injuries incurred: and *Provided further,*.

2. On page 2, line 6, strike out the words "in excess of 10 per centum thereof".

PURPOSE OF AMENDMENTS

The purpose of the first amendment is to prevent the subrogation of any insurance carrier to the award provided in this measure.

The purpose of the second amendment is to eliminate attorney's fees in connection with this claim.

PURPOSE OF LEGISLATION

The purpose of the proposed legislation, as amended, is to pay $10,000 to J. B. Phipps of Columbia, S. C., in full settlement of all claims against the United States for personal injuries, together with all expenses incident thereto sustained as a result of an accident involving a United States Air Force plane at Woodward Field, Camden, S. C., on February 18, 1944.

STATEMENT

A bill of identical purpose to this proposed legislation was introduced in the 83d Congress, 2d session. This bill, H. R. 6697, passed the House, August 4, 1954.

The facts available to the committee are fully set forth in certain correspondence relating to H. R. 6697, attached hereto. These facts may be summarized as follows:

On February 18, 1944, James Burke Phipps, age 24 years, was employed as a mechanic by Southern Aviation School, Inc., at Woodward Field, Camden, S. C. His employer was under contract with the Government to furnish flight instruction to aviation cadets at Woodward Field. Mr. Phipps was responsible for maintaining and servicing a particular group of aircraft used in this training. One of his duties in connection therewith was to assist the student pilots flying those airplanes to properly park them in a designated area after landing. Landing of aircraft in this parking area was forbidden and in taxiing a plane within, or onto that area, it was required that someone walk at one of the wingtips of the taxiing plane. At between 5 and 6 p. m. on February 18, 1944, Mr. Phipps, while waiting within the parking area to assist student pilots operating aircraft under his charge, observed an aircraft attempting to taxi across the field toward him and warned the pilot against doing so by waving to him, without moving from his position in the parking area. While so absorbed he failed to notice another plane making a prohibited landing in the parking area and he was struck by the propeller tip of that plane which almost severed his left arm and gouged his back deeply.

The student pilot of the craft which struck Mr. Phipps was an enlisted reservist who had been called to active duty and who was flying solo at the time.

Following the accident, Mr. Phipps was taken to the hospital where he was confined for 28 days. The medical officer's report indicates that his injuries at that time consisted of amputation of the left arm 4 inches from the shoulder, fracture of the right elbow, and laceration of the left thorax. Mr. Phipps states that in addition, both his hips were broken and were out of place, and that he received numerous bruises and abrasions on his body.

Investigation of the accident determined that it resulted from the failure of the air cadet to exercise proper judgment. This cadet later was relieved from further flight training and assigned to duties as an air crewman.

Mr. Phipps medical expenses were paid through workmen's compensation insurance carried by his employer, and as a result of the decision of the South Carolina Industrial Commission he also has received $6,000 in disability benefits.

The Department of the Army in its report on legislation seeking identical relief in the 83d Congress, H. R. 6697, indicated it had no objection to enactment of such legislation. The Department further observed that in the review of the court cases involving similar injuries, the total compensation to Mr. Phipps, if such legislation is enacted, would be within the range of awards allowed in such cases.

The Committee on the Judiciary believes the claimant is entitled to compensation from the Government as a result of the injuries

which he has suffered because of the negligence of a serviceman of the United States who was acting within the scope of his employment at the time of the accident. Moreover, the committee does not feel prior payments to the claimant under the workmen's compensation insurance should present any bar to payment of this claim since this claim is asserted against a principal for a tort. The claimant is unable to recover under the Federal Tort Claims Act of 1946 (28 U. S. C. 921–923), inasmuch as that act does not permit consideration of claims accruing prior to January 1, 1945. The committee therefore recommends that H. R. 1416, as amended, be favorably considered.

Attached hereto is the report of the Department of the Army previously referred to, and also an affidavit of the claimant.

DEPARTMENT OF THE ARMY,
Washington, D. C., June 2, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter, addressed to the Secretary of the Air Force and enclosing a copy of H. R. 6697, 83d Congress, a bill for the relief of J. B. Phipps, in which you requested a report on the merits of the bill. Inasmuch as the Department of the Air Force has no records of the subject matter of the bill, your request was forwarded to the Department of the Army for consideration and reply.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $10,000, to J. B. Phipps, of Columbia, S. C., in full settlement of all claims against the United States for personal injuries, together with all expenses incident thereto sustained as a result of an accident involving a United States Air Force plane at Woodward Field, Camden, S. C., on February 18, 1944."

Records available to the Department of the Army indicate that on February 18, 1944, James Burke Phipps (referred to in H. R. 6697 as J. B. Phipps), then 24 years of age, was, and had been for 2 years, employed as a mechanic by Southern Aviation School, Inc. (now out of business), at Woodward Field, Camden, S. C. His employer was under contract with the Government to furnish flight instruction to aviation cadets at the 64th Army Air Force Flight Training Center, stationed at Woodward Field. Under the terms of the contract, Mr. Phipps' employer was to furnish all personnel necessary for the maintenance of the aircraft and the field facilities. Mr. Phipps was responsible for maintaining and servicing a particular group of aircraft used in this training. One of his duties in connection therewith was to assist the student pilots flying those aircraft to properly park them in a designated area after landing. It appears that to land on this parking area was forbidden and that in taxiing a plane onto or within that area it was required that someone walk at one of the wing-tips of the taxiing plane. At about 6 p. m. that day, Mr. Phipps, while waiting within the parking area, but near its edge, to so assist student pilots operating aircraft under his charge, observed an aircraft attempting to taxi across the field toward him and warned the pilot against doing so by waving to him without moving from his position in the parking area. He then heard some one shout a warning; he turned to his right and observed an aircraft in the air coming directly toward him. He attempted to drop to the ground but the propeller tip struck him, cutting off his left arm and gouging his back deeply. The aircraft went on to make a prohibited landing in the parking area.

The student pilot of the craft which struck Mr. Phipps was Air Cadet Homer C. LaGassey, Jr., 20 years of age, with 62 pilot hours, who was flying solo at the time. Air Cadet LaGassey had become an enlisted reservist on November 19, 1942, and was called to active duty on January 28, 1943. When the accident occurred, landings were being made from east to west on a strip which, because of construction then in progress, was the smallest landing area on the field. This student pilot, on approaching to land his aircraft, selected a landing lane, adjacent to the parking area, in which two aircraft that had landed ahead of him

were finishing their landing roll. During his final approach, an aircraft on his right forced him to turn left, which placed his landing lane along the edge of the parking area. At an altitude of about 8 feet he noted Mr. Phipps' presence and attempted to turn back to the right. However, the aircraft was too stalled to maneuver or increase its altitude to avoid striking Mr. Phipps.

Immediately following the accident, Mr. Phipps was taken to the Camden Hospital, Camden, S. C., where he remained for 28 days. The medical officer's report indicates that his injuries at that time consisted of amputation of the left arm 4 inches from the shoulder, fracture of the right elbow, and laceration of the left thorax. Mr. Phipps states that, in addition, both of his hips were broken and were out of place and that he received numerous bruises and abrasions on his body. His property damage consisted of a $75 wrist watch, a $2 flashlight, and approximately $15 worth of clothing.

Investigation of the accident determined that it had occurred through the use of poor judgment on the part of Air Cadet LaGassey in his selection of a landing lane and in his approach to land. Construction on the airfield and heavy traffic in the landing pattern were contributing factors. A subsequent flight check to determine Air Cadet LaGassey's progress and flying ability disclosed that he exhibited definitely poor progress and poor technique. He was relieved from further flight training and was assigned to duties as an air crewman.

Following release from the hospital, Mr. Phipps appears to have undergone further medical treatment. His entire medical expenses were paid through workmen's compensation insurance carried by his employer, the Southern Aviation School, Inc., with the Great American Indemnity Co. of New York. It also appears that the South Carolina Industrial Commission determined that he was permanently disabled and has the following record of the matter:

"A hearing was had on this case on May 25, 1944, and an opinion was filed on June 1, 1944, awarding Mr. Phipps compensation for the loss of his arm for 200 weeks at $23.08 per week and for serious bodily disfigurement $1,199.36 in addition to what he had already been paid for temporary total disability. The total amount of compensation paid on this case was $6,000, the maximum under the provisions of the act.

"The medical [expenses] incurred in connection with this case was $1,215, which was also paid by the insurance carrier, and, in addition, $187.50 for an artificial arm."

For some time after the accident, Mr. Phipps was unable to do any work, but finally obtained employment as a ticket agent at a gas station at Galax, Va., which he states is his "home town." He is currently residing in Cameron Village, Raleigh, N. C., is married and has 2 children, the eldest of whom, aged 8 years, was born more than a year after the accident. The remaining evidences of his injuries are the amputation of his left arm and a large scar on his back.

At the time of the accident, the only administrative remedy available to Mr. Phipps was the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), which provided only for payment of actual expenses. Inasmuch as Mr. Phipps' hospital and medical expenses were provided for by the workmen's compensation insurance carried by his employer, the only compensation which could have been paid to him under this statute was for the property damage, totaling at most only $92. The Federal Tort Claims Act of 1946 (60 Stat. 842; 28 U. S. C. 921–932) was not enacted until August 2, 1946, and did not permit consideration of claims accruing prior to January 1, 1945.

Mr. Phipps has so far received compensation totaling $7,402.50 as a result of this accident ($6,000 disability benefits; $1,215 medical expenses; and $187.50 for artificial arm). The addition of the $10,000 provided in this bill will allow him compensation totaling $17,402.50 as a result of his injuries.

A review of court cases involving similar injuries indicates that the total compensation to Mr. Phipps, if this bill is enacted, will be within the range of awards allowed in such cases. Therefore, because Mr. Phipps' injuries resulted from the exercise of poor judgment on the part of a member of the Army, the Department of the Army has no objection to the enactment of this bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

AFFIDAVIT OF J. B. PHIPPS

STATE OF SOUTH CAROLINA,
County of Richland:

Before me personally appeared J. B. Phipps, who, being duly sworn, deposes and says:

On February 18, 1944, I received a disabling injury while employed as a mechanic by Southern Aviation School, Inc., a South Carolina corporation, which concern had a contract with the United States Government to furnish flight instructions to the United States Air Force aviation cadets at Woodward Field near Camden, S. C. Under the contract Southern Aviation School, Inc., also furnished all necessary maintenance personnel in connection with maintaining the aircraft and the field facilities. I started work for the aforementioned concern at Camden, S. C., in February of 1942 and had worked there continuously as a mechanic up until the time of the accident. About 6 or 8 months prior to the accident I had requested a transfer to Pearl Harbor, but under the then prevailing law I was frozen to the job and the Army would not release me.

Attached to this affidavit is a rough sketch of Woodward Field which is in grass with the exception of the parking area shown on the sketch, although since the accident happened the runways have been paved. A number of planes were assigned to me and it was my job to maintain them and keep them in operational condition. Under the prevailing regulations at the field when planes landed the pilot was required to taxi down to the end of the landing area and follow the outer perimeter of the area as he taxied back to either the east or the west end of the paved ramp where the planes were parked.

The pilots in training at the field were undergoing primary flight training and were using PT–17 which is manufactured by Boeing Aircraft of Wichita, Kans. These are biplanes with an 8-foot metal propeller, powered by a 200-horsepower engine.

One of my duties was to assist the pilots in parking the planes. One of the field regulations in force at the time was that under no conditions should a plane be taxied onto the paved parking area or within 50 feet of the area without someone walking at one of the wing tips, and to accomplish this the plane, of course, had to be taxied very slowly.

On February 18, 1944, at about 5 o'clock in the afternoon, I was on duty at the field and was standing at the edge of the paved parking area in about the position shown on the attached diagram, waiting on my planes to land so that I could assist the pilots in parking the planes, then take them over and service them. I was facing in a northerly direction and saw one pilot landing from east to west in about the middle of the landing area. He had landed and brought his plane down to taxiing speed when he was just opposite me and I saw him make a left turn and started taxiing directly toward me, in the path of other planes which were preparing to land. At the time there were a large number of planes in the air and they were all coming in to land in twos, threes, and fours, and several were approaching the east edge of the field, and it appeared that the taxiing pilot was cutting across the field directly in front of them and that there might be an accident. I therefore waved to the taxiing pilot indicating that he should turn back right and continue on down to the end of the landing area. The pilot apparently caught my signal because he did turn right and continued on taxiing in a westerly direction. In the meantime I had not moved out of my tracks but my attention had been diverted from the other planes still in the air, several of which were making landing approaches on the east end of the field. I heard someone shout "look out." On hearing this I turned to my right to see what the shouting was about and saw one of the planes still in the air coming directly toward me. It was almost on me and I tried to drop to the ground but the propeller tip hit my left shoulder, arm, and back. As will appear from the diagram, the pilot was really attempting to land on a part of the parking area which was prohibited, and as a matter of fact he did land on the west part of the prohibited area.

I was rushed to the Camden Hospital where I was treated by Dr. Carl West, of Camden, S. C. The propeller blade had badly mangled my left arm just below the shoulder and had cut and completely severed the large back muscle which is just below the shoulder. Both of my hips were broken and were out of place, my right elbow was fractured, and I had numerous bruises and abrasions all over my body. When the plane hit me it threw me to the pavement and I was rolled over very violently and that probably accounts for the fact that I received so many injuries. As a matter of fact the right landing wheel of the plane struck my back at about the time the propeller chewed into my left arm. I remained in the

Camden Hospital 28 days under Dr. West's care, and he found it necessary to remove my left arm about 3 inches below the shoulder.

For a considerable period of time after the accident I was unable to do any work, but I finally got a job as ticket agent for a bus station at Galax, Va., which is my hometown.

Although it is completely off, I still feel severe pain in my left arm just as vividly as if I still had it. As a matter of fact while I am giving this affidavit I feel the pain there, and frequently it bothers me at night and prevents my getting any rest. Needless to say I have been greatly handicapped in all my activities, and, of course, I cannot do the things I was able to do before I suffered the accident, and it has been quite a strain for me to provide a livelihood for myself, my wife, and two small children. Except for the loss of my left arm I have completely recovered, although I have a tremendous scar on my back where the muscle was cut, and a part of my back is actually missing where the propeller gouged it out.

Someone advised me to file, or they filed for me, a claim under the South Carolina Workmen's Compensation Act, and it is my understanding that the South Carolina Industrial Commission gave me a permanent disability rating of 60 percent of a general nature. In any event I was paid a total of $6,000 in disability benefits under the South Carolina Workmen's Compensation Act, which at that time was the maximum recoverable. I knew utterly nothing as to what my rights were in the matter and it is my impression that someone connected with the insurance company told me that the $6,000 I received was all that I could get from any source and one of the officials at the airfield told me the same thing, and for this reason I took no further action. At that time I did not know that I had a right to file a claim under the Federal tort liability statute, and it was not brought to my attention until after the statute of limitations had run. As a matter of fact without any other resources and being unable to provide a livelihood for my family, it was necessary that I expend the $6,000 for that purpose, and it was soon exhausted.

I don't know the name of the above-mentioned pilot who had landed and who was taxiing across the landing area in violation of the field rules. Homer LaGassey was the pilot of the plane that hit me. As above stated he was landing from east to west, and according to the field regulations upon seeing the first mentioned pilot taxiing across the field he should have taken a waveoff, circled the field again, and made another approach. Instead, according to his own statement made to me, he thought he would show off to the other cadets and try to squeeze in between the taxiing plane and the parking ramp. There is no question but that he had ample opportunity to gun his engine and make another approach. LaGassey told me that he had seen me standing there as he made his approach, but that the taxiing plane diverted his attention and he forgot about it; that he didn't think about me any more, but the instant he felt the impact of the plane striking me he knew exactly what he had done, but it was too late then. LaGassey was a flight cadet under the rolls of the United States Army Air Force, and was flying solo. As a result of the accident Cadet LaGassey washed out as a flight cadet but completed crew training and later qualified as a crew member on a bomber.

Woodward Field was an Army base under Army command and at the time Maj. Leonard Hauptrich, United States Army Air Force, was the commanding officer. There were a good many Army check pilots on duty there. They would supervise the work of the civil instructors and would from time to time check the pilots. The field was known and designated as the 64th Army Air Force Flight Training Center operated under the Southeastern Air Force Flight Training Command, with headquarters in Atlanta, Ga.

I wish to make it clear that I do not want anything to which I am not entitled, but I do feel that since I received a permanent and badly disabling injury as the result of gross negligence on the part of the pilot above mentioned, who at the time was a member of the Armed Forces and as such an employee of the United States Government, I should be given some help, and that my claim against the Government is meritorious.

J. B. PHIPPS.

Sworn to and subscribed before me this 11th day of March 1953.

[SEAL] P. H. NELSON,
Notary Public for South Carolina.

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Calendar No. 499

84TH CONGRESS, 1st Session } SENATE { REPORT No. 495

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

ESTATE OF JAMES F. CASEY

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1643]

The Committee on the Judiciary, to which was referred the bill (H. R. 1643) for the relief of the estate of James F. Casey, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 5, after the comma following the word "Casey", add the following: "service No. 33,317,739, private, first class, deceased, late of 2603 Memphis Street, Philadelphia 25, Pa.,".

2. On page 2, line 3, strike out the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to the estate of James F. Casey the sum of $881, in full settlement of all claims of said estate against the United States for the amount of the check dated September 4, 1953, which was made payable to James F. Casey on account of war claim due but which, because of illness, was not cashed by him before his death and was returned to the Treasury for cancellation.

STATEMENT

According to the records of the Foreign Claims Settlement Commission of the United States, it is disclosed that the decedent filed a claim on October 17, 1952, and that it was allowed and certified for payment on August 21, 1953. The record further discloses that James F. Casey died September 28, 1953. A check had been issued in payment of the claim but, due to the death of Casey, said check was

returned and canceled. Mr. Casey's only survivors were three brothers. Under the law, the three brothers did not qualify to receive a reissuance of the check.

The veteran died without any assets and Terrence Casey, one of the brothers, assumed the obligation of paying for the funeral bill to the undertaker except for the amount of $150, which was paid by the Government. After the aforesaid payment by the Government, there was still owing a balance of $599.95, which Terrence Casey paid out of his own pocket.

Other than commenting upon the fact of the limiting of payment of claims in survivorship cases of this nature, the Commission states that it cannot appropriately comment on the bill.

It is evident to the committee that there was found due and owing to Casey the sum of $881 and that a check was issued therefor. The only reason that the check was not accepted and cashed was due to the illness of Casey and his subsequent death. While, technically, the law does not allow the reissuance of a check to the category of persons who are entitled to the proceeds of this veteran's estate, it is believed that, in equity and fairness, the estate of James F. Casey should be awarded the sum of $881. It is, therefore, recommended that the bill, H. R. 1643, as amended, be considered favorably.

Attached hereto and made a part hereof is the report of the Foreign Claims Settlement Commission of the United States on a similar bill, H. R. 9968 of the 83d Congress, and a letter dated July 19, 1954, from Bernard J. Kelley, attorney and counselor at law, to Hon. James A. Byrne, a Representative in Congress from the Third District of Pennsylvania.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES,
Washington 25, D. C., July 26, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. REED: This is in further response to the request of your committee for the views of the Foreign Claims Settlement Commission with respect to the bill, H. R. 9968, for the relief of the estate of James F. Casey.

The purpose of this bill is to authorize and direct the Secretary of the Treasury to pay to the estate of James F. Casey the sum of $881, in full settlement of all claims against the United States arising out of the failure of James F. Casey, during his lifetime to negotiate Treasury check of September 4, 1953. This check was made payable to the decedent on the basis of an award by the War Claims Commission on his claim for certain prisoner-of-war benefits filed pursuant to section 6 of the War Claims Act of 1948, as amended.

The records of the Commission disclose that the decedent filed the claim in question October 17, 1952, and that it was allowed and certified for payment on August 21, 1953. The records further disclose that James F. Casey died September 28, 1953. The check issued in payment of the claim was returned and canceled. Mr. Casey's only survivors were three brothers. Mr. Terence Casey, 1 of the surviving brothers, requested forms for the filing of a claim by himself and his 2 brothers as survivors of James F. Casey. He was informed by the War Claims Commission as follows:

"Section 6 of the War Claims Act of 1948, as amended, under which your brother's claim was adjudicated, provides that, in the event of the death of the prisoner of war, the compensation may be paid only to certain specified individuals, namely, the widow, children, or parents of the deceased. Thus by the express provisions of the act the War Claims Commission is precluded from making awards to the estate of the deceased, or to survivors other than those named in the act."

Section 6 (c) of the act provides that payment of survivorship claims can be made "only to the following persons:

"(1) Widow or dependent husband if there is no child or children of the deceased;

"(2) Widow or dependent husband and child or children of the deceased, one half to the widow or dependent husband and the other half to the child or children in equal shares;

"(3) Child or children of the deceased (in equal shares) if there is no widow or dependent husband; and

"(4) Parents (in equal shares) if there is no widow, dependent husband, or child."

The attention of the committee is invited to volume 31 of the Comptroller General's opinions, page 422, wherein the Comptroller General of the United States in reply to an inquiry from the Chairman of the War Claims Commission said:

"Accordingly, in the light of the long line of decisions of this Office, cited above, and in the absence of statutory provisions, otherwise you are advised that where a check has been issued under either section 5 (d) or 6 (c) but has not been negotiated by the payee prior to his death, the check may be canceled and claims for the amount involved are for consideration by the Commission."

In view of the restrictions in the War Claims Act of 1948, as amended, limiting the payment of claims in survivorship cases and in light of the foregoing opinion of the Comptroller General of the United States, the Commission could not entertain the claim of Mr. Casey's surviving brothers for payment to them of the benefits payable to their deceased brother and cannot entertain a claim by the estate of James F. Casey. Beyond this, the Commission cannot appropriately comment on the bill H. R. 9968.

Informal advice has been received from the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

Sincerely yours,

WHITNEY GILLILLAND, *Acting Chairman.*

PHILADELPHIA 7, PA., *July 19, 1954.*

Re James F. Casey, service No. 33,317,739, private, first class, deceased, late of 2603 Memphis St., Philadelphia 25, Pa.

Hon. JAMES A. BYRNE,
334 O.d House Office Building,
Washington 25, D. C.

DEAR CONGRESSMAN BYRNE: I have been consulted by the three surviving brothers of the above decedent, James F. Casey, with regard to a check for approximately $881 from the War Claims Commission, Washington, which was received by the above decedent at 2603 Memphis Street, Philadelphia, last fall but was not cashed by him due to the fact that he was then suffering from lobar pneumonia and die before he could cash the check. Upon his death his brother, Terrence Casey, now residing at 5705 Dunlap Street, immediately forwarded the check back to the War Claims Division with the notation that his brother had died on September 28, 1953. It was Mr. Terrence Casey's belief that the three surviving brothers would have the court appoint an administrator of the estate of their deceased veteran brother who would apply, in behalf of the estate, for this money.

At about that time they enlisted your good offices and, under date of November 25, 1953, you wrote Mr. Terrence Casey stating that you had contacted the War Claims Commission and had been advised that the check was received by them and that it had been sent back to the Treasury Department. You also stated that you had been advised that "* * * under the War Claims Act the only survivors who are eligible for payment are widows, widows with children, and parents. Brothers and sisters or estates are not provided for. Therefore, this money has to go back into the war claims fund. The only alternative is the introduction of a special bill in Congress to authorize the payment of this sum to other survivors."

In your letter you also indicated that you would be glad to cooperate in the introduction of a special bill.

When I was consulted by the Caseys this morning I phoned your office and spoke to your Philadelphia secretary, Joseph E. Doyle, and, therefore, he is acquainted with this matter. Both the Casey brothers and myself would appreciate it no end if you would introduce this special bill as soon as possible. In my opinion if ever there was a meritorious case it is this one. The veteran died without any assets and Terrence Casey, his brother, assumed the obligation of

paying for the funeral bill to the undertaker, Edward H. McBride, 2321 East Huntingdon Street. The United States Government paid $150 toward the payment of the bill leaving a balance of $599.95 which Terrence Casey paid out of his own pocket and for which he holds a receipt.

In addition, during the time that the deceased veteran was a prisoner of war in Germany it was the habit of Terrence Casey, almost every week, to send by mail food, clothing, and other essentials to his brother at an expenditure totaling about $300. Moreover, immediately preceding his last illness the deceased veteran was unable to work, his brother, Terrence Casey, maintained him and supported him at his home and paid his doctor bills for him out of his own pocket, James Casey then being without means to provide for himself.

As I see this picture, I believe that the Government would be thoroughly justified in passing a special bill in the amount of $881 to reimburse Terrence Casey or the administrator to be appointed of the estate of James F. Casey.

Thanking you for anything you can do and with kindest personal wishes, I am

Very sincerely,

BERNARD J. KELLEY,
Attorney and Counselor at Law.

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Calendar No. 500

84TH CONGRESS, 1st Session | SENATE | REPORT No. 496

UNIV. OF MICH. JUN 16 1955 LAW LIBRARY

GEORGE L. F. ALLEN

JUNE 7, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3045]

The Committee on the Judiciary, to which was referred the bill (H. R. 3045) for the relief of George L. F. Allen, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 2, line 4, strike the word "reimburse" and insert in lieu thereof the word "pay".

2. On page 2, line 7, strike the words "which would have been paid him" and insert in lieu thereof the word "allowable".

3. On page 2, line 11, strike the period, insert a colon and the following:

Provided, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE OF THE AMENDMENTS

The purpose of the first two amendments is to change the phraseology of the bill to permit the reimbursement of the claimant for tuition and other expenses normally paid to the institution rather than to the veteran.

The purpose of the third amendment is to prohibit exaction of attorney's fees from any award resulting from this legislation.

PURPOSE

The purpose of the proposed legislation, as amended, is to waive the two provisos of paragraph 1 of part VIII of Veterans' Regulation No. 1 (a) setting time limits for the initiation and termination of education or training under such part VIII as to George L. F. Allen, of McAllen, Tex., if he initiates his education or training under such part VIII within 120 days after the date of enactment of this act.

STATEMENT

The claimant, George L. F. Allen, served in the Armed Forces of the United States from July 30, 1942, until his release from active duty on April 27, 1946. By virtue of this service, he became entitled to education or training under the Serviceman's Readjustment Act of 1944 (58 Stat. 287). The claimant immediately upon his discharge did not enroll in an educational institution but according to an affidavit appended to the House report entered upon a job "to prepare for finishing college education." However, in October 1947, the claimant was injured in an automobile accident and received severe injuries including partial paralysis of the right side of his body and damage to his right eye muscles. On June 7, 1949, the claimant applied for education or training benefits and was issued a certificate of eligibility and entitlement on June 20, 1949. He did not initiate a course of education or training under that certificate. Several affidavits, appended to this report, and executed by doctors state that it would have been impossible for the claimant to do any schoolwork prior to October 1951 when his eye finally reacted favorably to treatment.

On October 17, 1951, the claimant entered upon a course of education and on November 13, 1951, filed an application with the Veterans' Administration for education or training benefits. Accompanying this application were statements from the educational institution and a physician, setting forth the difficulties encountered by the claimant. Based upon this application, a certificate of eligibility and entitlement was issued to the veteran on November 30, 1951, showing his period of entitlement to be 3 years, 11 months, and 28 days. Four days later the Veterans' Administration by telegram and letter informed the veteran that since he did not initiate a course of education before July 25, 1951, he was not eligible for education benefits and that the certificate of eligibility had been issued in error. The termination date referred to in this last letter from the Veterans' Administration results from provisions in title II of the Servicemen's Readjustment Act of 1944 which required that a course of education or training must be initiated by the eligible veteran not later than 4 years after the date of his discharge from service or 4 years after termination of World War II, whichever is later. Section 3 of the act of July 25, 1947, fixed the termination of World War II for this purpose as July 25, 1947.

The Veterans' Administration in a report submitted in connection with a similar bill introduced in the 83d Congress, recommends against enactment, asserting that the granting of legislative relief in this case would be discriminatory against others similarly situated and might form a precedent for similar legislation in other cases.

The committee does not agree with the recommendations of the Veterans' Administration. The Government of the United States

saw fit to confer certain educational benefits on veterans of World War II, recognizing when it did so, that the normal educational pattern of these veterans had been disrupted by that war. In conferring these benefits the Government wisely provided that a veteran might elect, by inaction, to waive the benefits conferred upon him. These provisions establishing a time limit within which benefits must be exercised were placed in the law to provoke a decision by the dilatory although strict application of the provisions may operate to deprive others of such benefits. When, as here, the benefit was not utilized within the prescribed period by reason of physical incapacity, an exception by private legislation may well be warranted.

A reasonable construction of the evidence in this case is that the veteran intended to exercise the benefits conferred upon him and would have but for the unfortunate injuries suffered by him. Upon his release from service he undertook employment to enable him to accumulate sufficient funds to supplement the Government compensation available to him. After the automobile accident intervened, he made application for educational benefits before the expiration date. While the application was granted, apparently the claimant was compelled to abandon his desire to use these benefits because of the injury to his vision. When his vision was restored, he returned to college, made another application which was granted initially by the Veterans' Administration but revoked 4 days later.

The pattern thus developed does not demonstrate a lack of diligence by the claimant which would warrant strict adherence to the rigid limitations of the general statute. The claimant did not "sleep on his rights" but lost them as a result of physical incapacity which he could not remedy immediately.

This is the type of case in which the Government of the United States may demonstrate its fairness through the medium of private legislation. Insistence on observance of a statutory deadline on the general postulate that an exception, even in a meritorious instance, might create a precedent ignores the primary function of private legislation. The committee therefore recommends enactment of this legislation.

Appended to this report are the affidavits referred to earlier and the report of the Veterans' Administration.

Mr. LLOYD M. BENTSEN, Jr., M. C.,
House of Representatives, Washington, D. C.

DEAR LLOYD: The following is a brief outline of my activities since enrolling in college for the first time in 1938. The reason I went so far back is because I feel that my activities since that time have a bearing on my activities since 1946.

September 1938 to May 1941: Enrolled at Edinburg Junior College, Edinburg, Tex. Before and after school working in H. E. B. Food Store meat market, Pharr, Tex., from 5 to 11½ hours daily. Unable to take full course because of work and took 3 years to complete 2 years' study.

June 1941: Full-time work with United States Engineering Department, Moore Field, Tex., in order to be able to carry full college course without interruption.

With war starting, enrolled in civil-pilot training; enrolled in civil-pilot training, April 1942. Completed course, June 1942.

June 1942: Enlisted in United States Naval Air Corps. Commissioned in the United States Marine Corps, April 1943.

May 1946: Released to Inactive Reserve status by United States Marine Corps. Intended to work 28 months to prepare for finishing college education.

October 1947: Severe injuries in automobile accident, McAllen, Tex., resulted in partial paralysis of right side of body. Most damaging injury was to right eye muscles. At that time I went to Dr. J. B. Casey, eye specialist, McAllen, Tex., who was unable or unwilling to prescribe treatment.

Because of inability to keep balance, was referred to Dr. Sharon Storey, optometrist, Edinburg, Tex. Improved balance but unable to improve condition of right eye.

February 1949: Consulted Dr. Everett Gore, ophthalmologist, Houston, Tex. He recommended operation and scheduled mine for April 1949.

February 1949: Referred to Dr. Max Baldridge, ophthalmologist, Texarkana, Ark. He started me on a series of eye exercises.

October 1951: Felt that eyes and reflexes sufficiently improved to warrant enrollment for one trial course at Edinburg Junior College, Edinburg, Tex. After assuring myself that I could do the work, I enrolled at the Agricultural and Mechanical College of Texas, College Station, Tex., and have been here since that time.

Sincerely yours,

GEORGE L. F. ALLEN.

STATE OF TEXAS,
County of Brazos, ss:

Before me, the undersigned authority, this day appeared George L. F. Allen, known to me to be the person whose signature is affixed to the above statement, and states under oath that the statements made therein are true and correct to the best of his knowledge.

Witness my hand, this the 18th day of February 1954 at College Station, Tex.

[SEAL] MARIE FRANCHLOW,
Notary Public in and for Brazos County, Tex.

My commission expires June 1, 1955.

DRS. HAMME & HAMME,
Edinburg, Tex., February 19, 1954.

Lt. Col. W. TAYLOR WILKENS,
Assistant Commandant, Agricultural and Mechanical College of Texas, College Station, Tex.

DEAR SIR: This is to certify that I attended George L. F. Allen at Grandview Hospital in Edinburg, Tex., from October 8 to November 20, 1947. Mr. Allen had been in an automobile accident and remained in an unconscious condition for more than 30 days due to severe concussion of the brain. He also had numerous cuts, bruises, and abrasions as well as a comminuted fracture of the left clavicle. Mr. Allen had total to partial paralysis with much muscular atrophy to both arms and legs at first, which have slowly returned to normal. His chief complication of long-standing duration was the condition of his eyes. He had double vision for quite a while with a great deal of muscular imbalance. He also had a great deal of loss of coordination of his muscles and his Rhomberg remained positive for a long time.

He has seen numerous eye specialists and since seeing Dr. Max Baldridge in Texarkana, Ark., he has been able to get by by carrying three pairs of glasses, switching them as the occasion demands.

I know that it would have been impossible for Mr. Allen to do any school work prior to October 1951, when his eyes finally reacted more favorably, and he was able to get along with his three pairs of glasses.

Sincerely,

R. E. HAMME, M. D.

Sworn to and subscribed before me this 19th day of February A. D. 1954.

[SEAL] HELEN PEARSON COWAN,
Notary Public in and for Hidalgo County, Tex.

MCALLEN, TEX., *February 19, 1954.*

To Whom It May Concern:

George L. F. Allen was seen by me at the Edenburg Hospital, about October 8, 1947. He had received a severe head injury in an automobile accident, and remained unconscious for a period of approximately 6 weeks.

During this time he was treated by Dr. L. M. Helfer, a neurosurgeon, 704 Medical Arts Building, San Antonio, Tex., in consultation.

His recovery was slow, and he showed evidence of physical impairment for many months.

This condition prevented him from returning to school until about 1951.

W. H. DUNCAN, M. D.

Subscribed and sworn to before me this 19th day of February 1954.

[SEAL] FLORENCE DOCKTER,
Notary Public in and for Hidalgo County, Tex.

SAN ANTONIO, TEX., *May 10, 1952.*

Re Mr. George L. F. Allen.

Lt. Col. W. TAYLOR WILKINS,
Assistant Commandant, Texas Agricultural and Mechanical College, College Station, Tex.

DEAR SIR: Mr. George L. F. Allen was seriously injured in an automobile accident about the middle of October 1947, which resulted in prolonged stupor, hypertension, a mild uremia, and subarachoid hemorrhage, along with some weakness of the right extremities. Following return of consciousness, his improvement was very slow because of the persistent stiffness of the right upper and lower extremity and some difficulty in talking. It was not possible for him to return to school until about 4 years later (October 1951).

Very truly yours,

LEWIS M. HELFER.

STATE OF TEXAS,
County of Bexar, ss:

Sworn and subscribed to this the 23d day of May A. D. 1952.

[SEAL] RUTH M. BRYANT,
Notary Public in and for Bexar County, Tex.

SOUTHERN CLINIC,
Texarkana, Ark.-Tex., May 3, 1952.

Re Mr. George L. F. Allen.

To Whom It May Concern:

The above-named patient has been under my care with respect to his eyes since February 6, 1950. At the time he was first seen he was found to have some imbalance in the muscular control of his eyes, apparently secondary to an injury he received in an automobile accident approximately 2½ years before the time I saw him.

He also had a pterygium on the left eye. At that time the pterygium was removed and, on recovery from this minor surgical procedure, he was placed on exercises and refractive correction for his muscular imbalance. He responded well to the exercises and has been followed on a number of occasions since they were started. He has continued to do well and has no abnormality which should handicap him in college work.

He was advised that I felt certain he would be able to handle college work in October 1951, and he has proved his ability to do so since that time.

Yours very truly,

MAX BALDRIDGE, M. D.

Subscribed and sworn to before me this 3d day of May 1952.

[SEAL] RUTH BARNES FISHER,
Notary Public, Miller County, Ark.

My commission expires February 2, 1956.

SAN ANTONIO, TEX., *February 19, 1954.*

Re Mr. George L. F. Allen.

Mr. LLOYD M. BENTSEN, Jr.,
House of Representatives, Washington, D. C.

DEAR SIR: Mr. George L. F. Allen was seriously injured in an automobile accident about the middle of October 1947, which resulted in prolonged stupor,

hypertension, a mild uremia and subarachnoid hemorrhage, along with some weakness of the right extremities. Following return of consciousness, his improvement was very slow because of the persistent stiffness of the right upper and lower extremity and some difficulty in talking. It was not possible for him to return to school until about 4 years later (October 1951).

Very truly yours,

LEWIS M. HELFE.

Subscribed and sworn to before me this 19th day of February 1954.

[SEAL] RUTH M. BRYANT,
Notary Public, Bexar County, Tex.

SOUTHERN CLINIC,
Texarkana, Ark.-Tex., February 19, 1954.

Re Mr. George L. F. Allen

Congressman LLOYD M. BENTSEN, Jr.,
House of Representatives, Washington, D. C.

DEAR SIR: The above-named patient has been under my care with respect to his eyes since February 6, 1950. At the time he was first seen he was found to have some imbalance in the muscular control of his eyes, apparently secondary to a head injury he received in an automobile accident approximately 2½ years before the time I saw him. He had been unable to read effectively or comfortably since the injury.

He also had a pterygium on the left eye. At that time the pterygium was removed and, on recovery from this minor surgical procedure, he was placed on exercises, refractive correction, and prisms for his muscular imbalance. He responded well to the exercises and has been followed on a number of occasions since they are started. He has continued to do well and has no abnormality which should handicap him in college work.

He was advised that I felt certain he would be able to handle college work in October 1951, and he has proved his ability to do so since that time. He was last examined September 4, 1953.

Your very truly,

MAX BALDRIDGE, M. D.

Subscribed and sworn to before me this 19th day of February 1954.

[SEAL] RUTH BARNES FISHER,
Notary Public, Miller County, Ark.

My commission expires February 2, 1956.

VETERANS' ADMINISTRATION,
REGIONAL OFFICE,
San Antonio, Tex., December 3, 1951.

Mr. GEORGE LEONARD FRANK ALLEN,
McAllen, Tex.

DEAR MR. ALLEN: Further reference is made to your telegram of November 30, 1951, concerning your application for education or training under Public Law 346, as amended.

Upon receipt of your telegram your records were reviewed and it was found that erroneous action was taken on November 30, 1951, in issuing you a certificate of eligibility valid for a general academic course with Edinburg Regional College. This is in accordance with existing regulations which stipulate that a veteran who was discharged from service on or before July 25, 1951, must have actually initiated his elected course of training on or before the cutoff date. The cutoff date in your case was July 25, 1951.

Therefore, since you did not initiate your training on or before July 25, 1951, you are not eligible for education or training under Public Law 346, and the certificate issued should be returned to this office for cancellation.

If there is evidence available to you which in your opinion would warrant a different decision, such evidence should immediately be submitted to this office for reconsideration of your claim. If you have no evidence to submit, but have reason to believe that the decision is not in accordance with the law and the facts in your case, you may appeal to the Administrator of Veterans' Affairs at any

time within 1 year from the date of this letter. If you wish to appeal, you should so advise this office and you will be furnished with VA form P–9 for that purpose.

Very truly yours,

LLOYD M. O'NEAL,
Chief, Registration and Research Section.

OCTOBER 23, 1951.

Mr. JOHN SAWYER,
Veterans' Adviser,
Edinburg Regional College, Edinburg, Tex.

DEAR MR. SAWYER: George L. F. Allen has been unable to enroll in school under the GI bill because of a very severe automobile accident in 1947, in which he sustained critical head injuries with resulting visual disturbances. He has been receiving active treatment since the time of the injury and at this time has improved to the extent that he can now read normally, and therefore should be able to resume his education.

Sincerely,

LLOYD SMITH, M. D.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., June 2, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. REED: This has further reference to your request for a report by the Veterans' Administration on H. R. 1325, 83d Congress, a bill for the relief of George L. F. Allen, which provides as follows:

"That the two provisos of paragraph 1 of part VIII of Veterans' Regulation No. 1 (a) setting time limits for the initiation and termination of education or training under such part VIII shall not apply to George L. F. Allen, of McAllen, Tex., if he initiates his education or training under such part VIII within 120 days after the date of enactment of this act. Upon the said George L. F. Allen so initiating his education or training under such part VIII, he shall be held and considered to have been eligible for education or training under such part beginning October 17, 1951, the date on which he actually commenced his education or training. The Administrator of Veterans' Affairs shall reimburse the said George L. F. Allen for tuition, subsistence allowances, and other expenses related to his education or training which would have been paid him under paragraphs 5 (a) and 6 (a) of such part VIII if he had been eligible on and after October 17, 1951, and shall make the appropriate deduction of time from the period of eligibility of the said George L. F. Allen."

The veteran, George L. F. Allen, C–11 569 893, entered active service in the Armed Forces on July 30, 1942, and was released from active duty on April 27, 1946. On June 7, 1949, he applied for education or training benefits under part VIII, Veterans Regulation No. 1 (a), as added by title II of the Servicemen's Readjustment Act of 1944 (58 Stat. 287), as amended, and was issued a certificate of eligibility and entitlement on June 20, 1949. He did not initiate a course of education or training under that certificate. However, on November 13, 1951, there was received in the Veterans' Administration another application by the veteran for education or training benefits, wherein he indicated that he had entered upon a course of education on October 17, 1951. Accompanying this application were statements from the educational institution and a physician, which in effect stated that since the time of receiving critical injuries in the year 1947, the veteran had been physically unable to enter upon a course of education. Based upon this latest application, a certificate of eligibility and entitlement was issued to the veteran on November 30, 1951, showing his period of entitlement to be 3 years, 11 months, and 28 days. This would have provided benefits for nearly 48 calendar months or for more than 5 ordinary school years.

However, upon further review, the Veterans' Administration by telegram and letter, both under date of December 3, 1951, informed the veteran, among other things, to the effect that since he had not initiated a course of education or training on or before the applicable statutory delimiting date, July 25, 1951, he was not eligible for such benefits, and that the mentioned certificate of eligibility and entitlement had been issued in error and should be returned to the Veterans'

Administration for cancellation. His representative was subsequently informed, among other things, to the effect that the delimiting date was made mandatory by statute and that it was not possible for the Veterans' Administration to take favorable action in the case. Upon appeal, the Board of Veterans' Appeals confirmed the prior action of denial of the veteran's application for education or training. In its decision, the Board stated, among other things, that it was mandatory that the veteran actually commence his training on or before the statutory delimiting date applicable to his case, July 25, 1951, and that since the evidence established that the application for original entrance was not received until after the applicable delimiting date, training may not now be authorized.

By reason of the specific provisions of the law, a course of education or training under title II of the Servicemen's Readjustment Act of 1944 must be initiated by the eligible veteran not later than 4 years after either the date of his discharge from service or 4 years after the termination of World War II, whichever is later. No education or training may be afforded beyond 9 years after the termination of World War II. Section 3 of the act of July 25, 1947 (Public Law 239, 80th Cong.), fixed the termination of World War II for this purpose as July 25, 1947, except for those persons who enlisted or reenlisted under the Armed Forces Voluntary Recruitment Act of 1945 (Public Law 190, 79th Cong., Oct. 6, 1945) within the first year after enactment of the 1945 act. Consequently, with the mentioned exception which is inapplicable in Mr. Allen's case, all such courses must have been commenced by July 25, 1951, or be commenced by the date 4 years after the date of discharge, if such date is later, and training may not be afforded after July 25, 1956.

On April 1, 1950, the Veterans' Administration issued a regulation implementing the law, which prescribed that in order to comply with the statutory deadline, the veteran must actually have commenced and been engaged in training on the delimiting date for initiating a course (except for excused interruptions) and must pursue the course in which he was then engaged (subject only to such changes as the Administrator might permit) on a continuous basis until completion, except for interruptions of a character which might normally occur in the case of any student. Special consideration was given to certain categories of persons who had previously commenced training under the act but for reasons deemed to be beyond their control either were not able to resume their training by the applicable deadline or were not in a position to remain continuously in a training status. However, in all cases, the veteran must have actually commenced his course within the specific time limitations.

H. R. 1325 proposes to except Mr. Allen's case from the application of the statutory delimiting dates of July 25, 1951, and July 25, 1956, provided by the general law, if he initiates his education or training under the mentioned part VIII (presumably by a new application) within 120 days after the date of its enactment. Upon Mr. Allen so initiating education or training, he would be held and considered under the bill to have been eligible for such education or training beginning October 17, 1951. As previously indicated, Mr. Allen was potentially eligible to receive educational benefits for more than 5 ordinary school years. Thus, the pursuit of such a course of education or training, including any authorized interruptions under applicable regulations, could continue well beyond the terminal date of July 25, 1956, applicable to other veterans.

The bill would also require (lines 3–8, p. 2) the Veterans' Administration to "reimburse" Mr. Allen for subsistence allowance, tuition, and related costs which would have been paid "him" under applicable law, based upon certain conditions assumed in the bill. The intent of this requirement is doubtful, since under the law tuition and related costs are paid by the Veterans' Administration to the educational or training institution concerned—not to a veteran, and such costs as well as subsistence allowances are paid as amounts due pursuant to the applicable statutory rate—not as reimbursements to veterans. Although not entirely clear it appears that the provision in question is intended to require the Veterans' Administration to pay to Mr. Allen for a retroactive period beginning October 17, 1951, the amounts which would have been payable in this case for subsistence allowance, tuition and related costs had he been legally eligible for education and training benefits under the mentioned part VIII.

The reasons advanced by the veteran to justify the granting of the equitable relief proposed in the bill were, that prior to his injury on October 8, 1947, it had been his intention to engage in private employment to accumulate funds for his education, and that from the date of his injury on October 8, 1947, to October 17, 1951, the date of his entrance upon a course of education at his own expense, he was physically unable to avail himself of the mentioned education and training

benefits. Many veterans have been unable or unwilling, for one reason or another, to take advantage of the education and training opportunities of the Servicemen's Readjustment Act of 1944, and a very considerable number have been prevented from doing so because of physical disability. In Mr. Allen's case, it is noted that in his application for a course of education or training dated November 6, 1951, he stated that he had been employed as a salesman from January 1950 to January 1951. The circumstances attendant upon such employment are not known by the Veterans' Administration, but it is observed that the employment occurred subsequent to the veteran's injury and while he was yet eligible to receive education or training benefits.

The cost of H. R. 1325 would of course, depend upon the nature and the duration of the course of education or training pursued by Mr. Allen, and whether and for what period he established that he had a dependent or dependents. In view of these unknown factors the Veterans' Administration is unable to furnish an estimate of the cost of the bill, if enacted. However, for the information of the committee, the law in question authorizes payments to educational or training institutions for tuition and related costs at a rate in most cases not to exceed $500 for an ordinary school year, as well as the payment to veterans of subsistence allowances ranging from $65 to $120 monthly while enrolled in and pursuing a course of education or training.

The circumstances of this case have been carefully considered and no reason is apparent why it should be singled out for special legislative treatment. To grant legislative relief in this case would not only be discriminatory against other veterans in the same or similar circumstances, to whom education or training benefits are barred by the applicable statutory delimiting date relating to the initiation of a course, but would also be discriminatory against other veterans of World War II now engaged in a course of education or training under the Servicemen's Readjustment Act of 1944, who must complete their course before the statutory delimiting date relating to the completion of such course (June 25, 1956). Further enactment might form a precedent for similar legislation in other cases. It is noted in this connection that there is general legislation pending before the Committee on Veterans' Affairs, House of Representatives, which proposes to extend the delimiting dates applicable to education or training benefits under title II of the Servicemen's Readjustment Act of 1944, as amended.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report of the committee.

Sincerely yours,

CARL R. GRAY, Jr.
Administrator.
H. V. STERLING
(For the Administrator).

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84TH CONGRESS, 1st Session | SENATE | REPORT No. 497

PROVIDING FOR THE CONVEYANCE TO ST. MARY'S MISSION OF CERTAIN LANDS ON THE TURTLE MOUNTAIN INDIAN RESERVATION

JUNE 7, 1955.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1397]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1397) providing for the conveyance to St. Mary's Mission of certain lands on the Turtle Mountain Indian Reservation, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 1, lines 5 and 6, change the name of the grantee to "Saint Louis Church of Dunseith, Dunseith, North Dakota".

Page 1, lines 8 and 9, delete "located on the Turtle Mountain Indian Reservation".

Amend the title so as to read:

A bill providing for the conveyance of certain lands to Saint Louis Church of Dunseith, Dunseith, North Dakota.

PURPOSE OF THE BILL

The purpose of S. 1397, as amended, is to provide for the conveyance of a 10-acre tract of land to St. Louis Church of Dunseith, Dunseith, N. Dak. The lands to be transferred are a part of a 160-acre tract beyond the exterior boundaries of the reservation held in trust by the United States for the Indians of the Turtle Mountain Indian Reservation. The appraised value of the land is $70.

The advisory committee of the Turtle Mountain Band of Chippewa Indians adopted a resolution on January 10, 1955, requesting enactment of legislation to give the land to the mission. Upon acquiring the site, the mission plans to construct additional school and community facilities to serve the Indians.

The favorable reports of the Department of the Interior and the Bureau of the Budget recommending enactment of the bill follow:

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., May 12, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR MURRAY: Your committee has requested a report on S. 1397, a bill providing for the conveyance to St. Mary's Mission of certain lands on the Turtle Mountain Indian Reservation.

We recommend that the bill be enacted if amended as suggested below.

The bill directs the Secretary of the Interior to transfer, with the consent of the Turtle Mountain Advisory Committee, to St. Mary's Mission, Dunseith, N. Dak., all the right, title, and interest of the United States and the Turtle Mountain Band of Chippewa Indians in 10 acres of land, excepting therefrom 100 feet along the section line for highway purposes.

The land involved is a part of a 160-acre tract purchased in 1942 pursuant to the provisions of the act of May 24, 1940 (54 Stat. 219), as amended by the act of May 28, 1941 (55 Stat. 207). Title was taken by the United States of America in trust for the Indians of the Turtle Mountain Indian Reservation.

The advisory committee of the Turtle Mountain Band of Chippewa Indians, by resolution adopted January 10, 1955, requested the enactment of legislative authority to give the land to the St. Mary's Mission. The mission expects to expend considerable funds for the construction of additional church facilities. The appraised value of the tract is $70.

The following amendments are suggested:

On page 1, lines 5 and 6, change the name of the grantee to "Saint Louis Church of Dunseith, Dunseith, North Dakota", which is the corporate name of the parish that serves the St. Mary's Mission.

On page 1, lines 8 and 9, delete "located on the Turtle Mountain Indian Reservation". The lands are not within the exterior boundaries of the reservation.

The Bureau of the Budget has advised us that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., May 10, 1955.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Bureau on S. 1397 providing for the conveyance to St. Mary's Mission of certain lands on the Turtle Mountain Indian Reservation.

It is our understanding that this bill is the result of a resolution of the advisory committee of the Turtle Mountain Band of Chippewa Indians of North Dakota adopted January 10, 1955. The bill provides for the conveyance of a small tract of land having an appraised value of $70 to St. Mary's Mission. The land is desired by the mission for the construction of additional facilities.

In a report which the Secretary of the Interior is transmitting to your committee certain amendments of a perfecting nature are being recommended. Subject to your consideration of these amendments, this Bureau would have no objection to the enactment of the bill.

Sincerely yours,

(Signed) DONALD R. BELCHER,
Assistant Director.

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